

Growth of the Indian Constitution

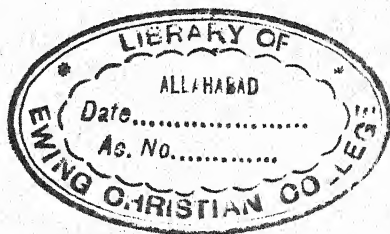
Being

A Study into the Important Acts Relating to
the Constitution of the British
Government in India

by

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PREFACE

My apology for allowing these notes to be published is my desire to meet a long-felt want for a book of this nature. A history of the Indian Constitution, showing all the essential points of its gradual development and yet avoiding all details unnecessary for juvenile readers, should make an important part of the study of either political history or Civics, prescribed for Intermediate Students. For the High School students as well, this book is expected to form good supplementary reading to provide them with information about important landmarks of the constitutional growth and the framework of the present-day Constitution. To understand the true significance of the Government of India Act, 1919, which led us ahead by a stage on to the road of 'constitutional government,' by giving us a small measure of 'responsible government' in the provinces, it is necessary to find where the seed lay out of which the present constitution fructified. And the purpose of this book has been to trace that seed and to show a gradual and continuous development thereof.

My lecture notes, forming the material of this book, have been largely drawn from the excellent source books: 'Indian Constitutional Documents' compiled by P. Mukherji consisting of two vols. of 864 pages containing original documents, 'The Report on Indian Constitutional Reforms; 1918,' and Keith's 'Speeches on Indian Policy Vol. II' which contains the Government of India Act, 1919. The other books which I profitably consulted when preparing these notes were The Indian Year Book, 1924; Horne's Political System of British India; Ilbert's Government of India; Imperial Gazetteer of India Vol. III; Rushbrook-William's India in 1919; Vaswani's New Indian Administration; Vincent Smith's Oxford History of India and Robert's History of British India. To all those authors I acknowledge my debt in greater or less degree. Amongst those who have given advice or suggestions I have specially to thank my senior colleague Prof. F. R. Collins, M. A., Head of the History Department, E. C. College, Allahabad, for having kindly read through the whole work in manuscript with great care, and suggesting many valuable improvements.

Gangavilla, Bairana
Allahabad, July 25, 1927.

} N. N. GHOSH

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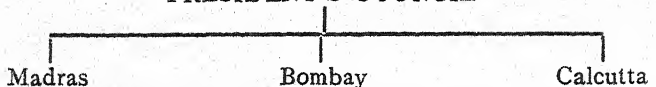
CHIEF EVENTS CHRONOLOGICALLY ARRANGED

- 1600 Elizabethan Charter. Birth of the East India Company.
- 1609 The Charter renewed by James I. Increased legislative power to the Company.
- 1612 The Joint Stock Company.
- 1623 Presidents' power to punish offences increased.
- 1669 Bombay leased to the E. I. C., by Charles II.
- 1677 Right of coinage granted to Bombay.
- 1687 Madras given the power of establishing a Municipality by James II.
- 1708 The 'United Company.'
- 1751 Capture and Defence of Arcot.
The Battle of Caveripak
- 1757 Relief of Calcutta.
The Battle of Plassey
- 1758 The Capture of the Northern Sarkars.
- 1760 The Battle of Wandiwash.
- 1761 The Third Battle of Panipat.
The Capture of Pandichery
- 1764 The Battle of Buxar.

- 1765 The Treaty of Allahabad.
- 1773 The Régulating Act.
- 1781 The New Charter Act.
- 1783 The Fox India Bill.
- 1784 Pitt's India Act.
- 1786 A statute giving the G. G. power to overrule the majority in his Council in certain cases.
- 1793 The Charter Act. A slight attack on the Company's trade monopoly.
- 1800 Madras was given legislative power and a supreme Court of Judicature.
- 1807 Bombay obtained legislative power.
- 1813 The Charter Act. Company's monopoly of Indian trade abolished.
- 1823 Bombay obtained a Supreme Court of Judicature.
- 1833 The Charter Act. Company's monopoly of the China trade abolished. Important political Changes. A Law member appointed.
- 1853 A Lieutenant-Governor for Bengal. Law member made an ordinary member. The first Legislative Council. Civil service thrown open to public competition.
- 1854 The Government of India Act. More power to the G. G.
- 1858 Transfer of the Indian administration from the Company to the Crown.
- 1861 The India Councils Act.

- 1865 The Government of India Act.
- 1873 36 Vict. C. 17 formally dissolved the E. I. C.
- 1876 The Royal Titles Act.
- 1892 The Reform Act. Enlargement of the Legislative Councils.
- 1904-5 The Russo-Japanese war. The University Act. Partition of Bengal. Unrest in India.
- 1909 The Morley-Minto Reforms.
- 1914 Outbreak of the Great War.
- 1917 The Imperial War Conference. The declaration of August, 20.
- 1919 The Government of India Act. Montagu-Chelmsford Reforms.

PRESIDENT'S COUNCIL



1773 Supreme Executive Council of four members.

1853 Supreme Legislative Council with the addition of *six* nominated official members.

1861 Supreme Legislative Council of twelve nominated members of whom half being non-officials.

1892 Supreme Legislative Council of sixteen nominated members of whom only six were officials.

1909 Supreme Legislative Council expanded into one of sixty-nine members composed thirty-seven official and thirty-two non-official *elected* members. (Seat at Delhi since the transfer of capital to that city in 1912.)

1919

The Legislative Assembly
144 members : 104 elected non-officials.

14 nominated non-officials.

26 officials—nominated and ex-officio.

The Council State
60 members : 34 elected non-officials.

26 nominated (non-officials and officials.)

Table to illustrate the Growth of the Supreme Indian Legislature.

CHAPTER I

INTRODUCTION.

Some terms and phrases should first be explained before a student is initiated into the study of the constitutional history of a country.

The term '*constitution*' means a body of laws and customs established by the *sovereign power* of a state for its own guidance.

A 'Sovereign Power' has three functions: legal, executive and judicial. In its legal function it passes the law, in its executive function it carries out the law that is passed, and in its judicial function it upholds the law as between individuals, by punishing the man who breaks it and by compensating the one who suffers by the breach. A sovereign power, therefore, makes the law, executes the law and upholds or maintains the law; in other words it is the father, the servant, and the guardian of the law.

That part of the sovereign power is the executive part of it which executes the law i.e., governs the state according to law. Therefore it is more to the point to call the executive part of the sove-

reign power the *government*. For example, the King in Parliament forms the sovereign power in England, but the *Cabinet* i.e., the body of ministers commanding the majority of the House of Commons for the time being is strictly the Government of England. When we say the Government of England we mean the Cabinet. The Governor-General of India in Council is the sovereign power in India in a limited sense.¹ But the Governor-General and his Executive Council as distinguished from the Legislative Council constitute the *Government of India*.

A constitutional government means a government which is bound by a constitution beyond which it can never go; it must act within the scope provided by the constitution. A constitutional government is thus opposed to *arbitrary, absolute* or *despotic* government which can do anything it likes without being bound by any law or constitution, or without being responsible to the people or the representatives of the people which it governs. A constitutional government is a responsible government.

1. A sovereign power is all powerful. But the Governor General in Council is subordinate to the British Government, and has a limited power of making laws and executing them.

representative government

The responsibility of government to the people presupposes representative government in modern states. In ancient time when the territory under a government was small, as for instance, in the city states of Greece or the small republics of ancient India, the government might have been *directly* controlled by the assembly of the whole people, gathered together occasionally in an open space. Tacitus, the great historian of the ancient German peoples, testifies to the existence among the tribes of the forest of Germany of such direct democracy, as distinct from representative democracy. But the modern state comprises a far larger territory and includes within it a far larger population. The wish and the voice of the people of a modern State cannot possibly be heard directly except through their representatives. Hence representative government is the only suitable form of democratic and constitutional government for a large modern state.

The meeting or the assembly of the representatives of a people elected by the people goes by different names in different countries. The elected representatives of England form the House of Commons, which is the lower and the more important House of the British Parliament; the

upper House, known as the House of Lords, is a *hereditary* body consisting of all the English peers and 16 Scottish Lords and certain high church dignitaries. A peer in England is like a hereditary Zamindar or Taluqdar of India. In America the elected representatives of the people go by the name of Congress which consists of two Houses—an upper House known as the Senate and a lower House called the House of Representatives. In India the elected representatives of the people, constituting the Supreme Legislature, form two Houses: (1) the Assembly (the lower House) and (2) the Council of State (the upper House).

The Legislature, by whatever name it goes, is the legislative machinery of the sovereign power. It plays the most important part in the sovereign power, inasmuch as it makes the law and thus guides and controls the executive and the Judiciary. In a strictly Parliamentary Cabinet system of Government, as in England, the executive *i.e.*, the Government, is a loyal and ever-obedient agent of the Legislature, strictly acting up to the spirit and letter of the constitution, and the law passed, by the Legislature. If the Government betrays the trust imposed upon it by the Legislature, by arbitrary acts, the latter becomes dissatisfied and

replaces the Government by a new executive. This is the supreme test of a Parliamentary Cabinet system of Government.¹

The constitution of India is not yet fully developed. Although we have a fairly large representative element in the Supreme Legislature, by virtue of the Government of India Act of 1919, our Government is not yet strictly constitutional inasmuch as it is irresponsible to, and irremovable by, the Legislature;² yet we are on the high road

1. This is not however true of the U. S. A. and the large number of American states whose constitutions are based on that of the U. S. A. These states are strictly constitutional states but the legislature cannot oust the executive. England and the states whose constitutions provide for the English Cabinet System have not completely separated the legislative and executive branches of the Government, whereas in the American system there is a more complete separation of powers. The distinction lies in the fact that England has a Parliamentary *Cabinet* system of Government, whereas America has a Parliamentary-Presidential System and with the Cabinet appointed by the President, the members not being members of Parliament or Congress. The Cabinet members are therefore responsible to the President, not to Congress. The President may dismiss them but not Congress. The President is elected by the people and cannot be turned out of office till his term ends, except by impeachment for some serious offence.

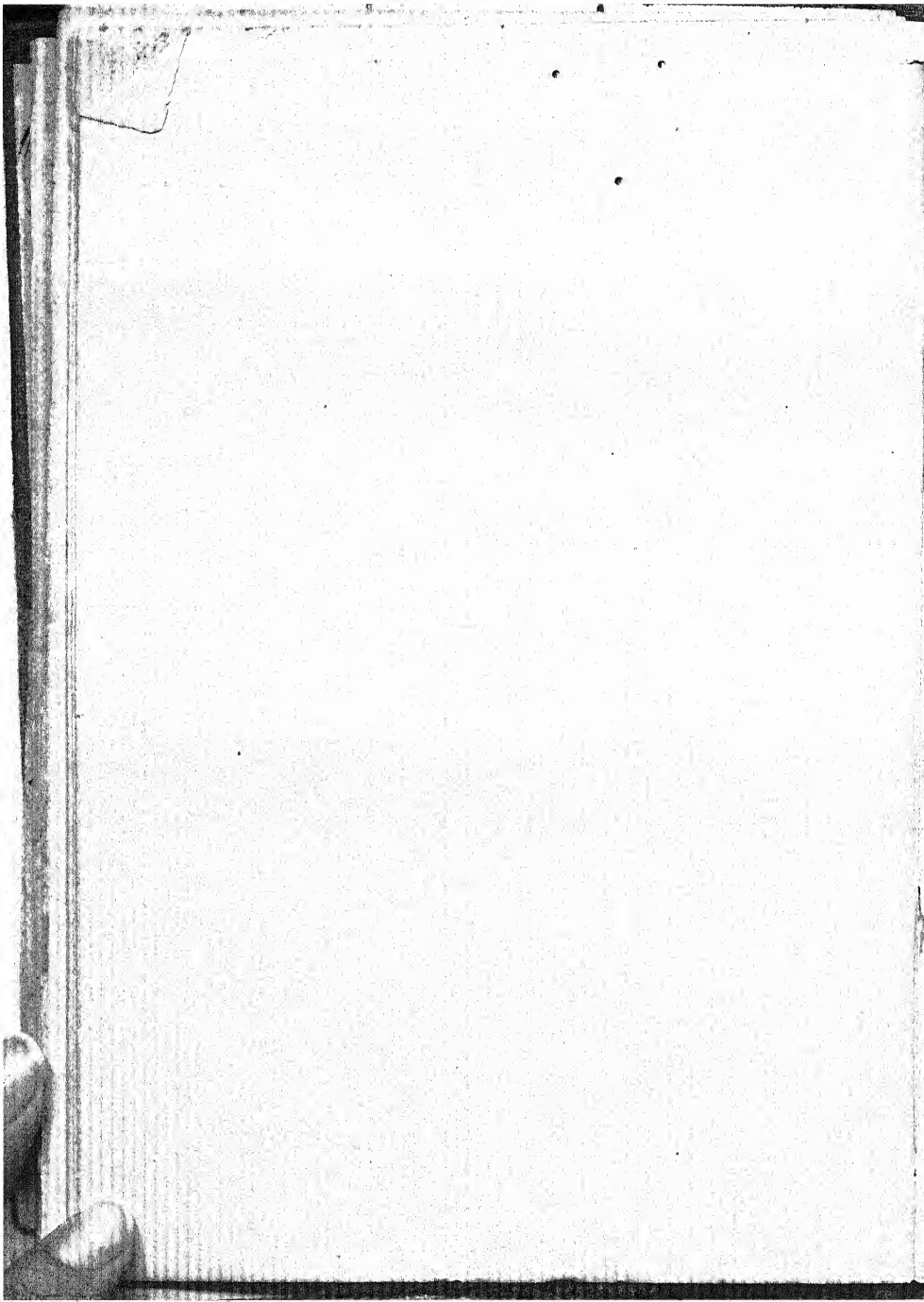
2. Although by virtue of the Act of 1919 both the supreme and the Provincial Legislatures contain a majority of the people's representatives, the Central Government has no element of responsibility to the Legislature. The

to developing a full constitutional government, very much unlike what we have ever had in our own country either during Hindu or Muhammedan rule. It was only in the time of the first two Maurya Emperors and then in the time of the four great Mughal Emperors that attempts have ever been successfully made to unite the whole country under one Central Government. Although during the rule of those sovereigns, "rudimentary institutions for the conduct of local affairs existed in the village communities,¹ and the trade guilds in the towns", the Central Government was at best a benevolent despotism with hardly anything like popular representation by a graded elective system from the village to the Capital, some of the small republican states, here and there, providing an exception to the general rule.

provincial governments have only partial responsibility, with reference to the transferred subjects. For details see Chapter VII.

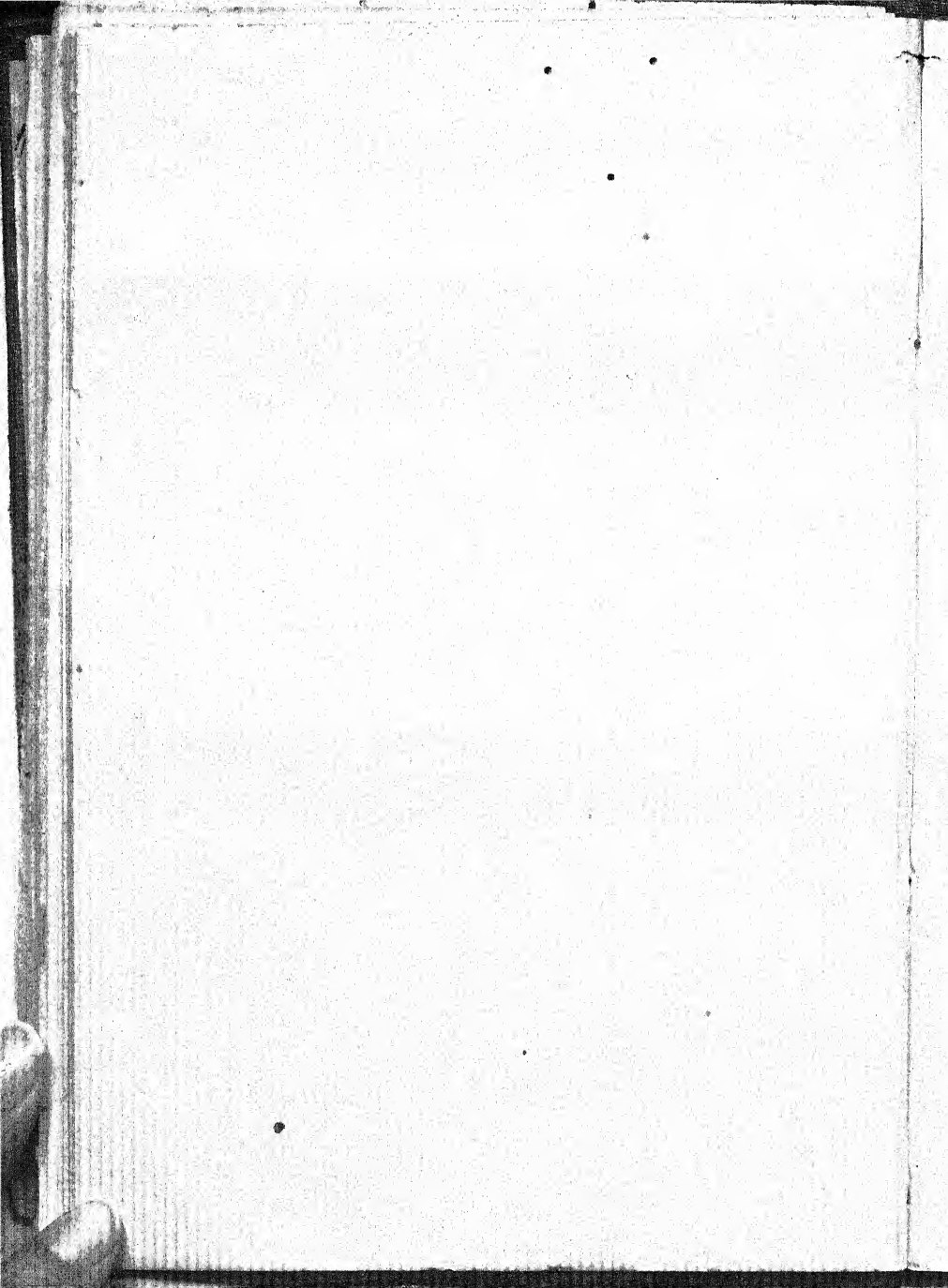
1. In the picturesque language of Sir Charles Metcalf: "The village communities are little republics, having nearly everything they can want within themselves and almost independent of foreign relations. They seem to last where nothing else lasts. Dynasty after dynasty tumbles down; revolution succeeds revolution; Hindu, Pathan, Mughal, Mahratta, Sikh, English, are all masters in turn, but the village community remains the same.

The tendency of the modern political world is to develop the state into a representative democracy and a constitutional government. India cannot remain immune from the cross currents of the world spirit, and especially so when her destiny is indissolubly linked with that of Great Britain which has developed an ideal constitutional government in her own country. The growth of the Indian Constitution in the modern sense has really begun from the time of British rule in India, and the purpose of this book is to trace its history from that time. I have, therefore, begun from the convenient landmark provided in the year 1600 by the famous Elizabethan Charter which gave birth to the English East Indian Company, and indirectly laid the foundation of British rule in India.



PART I

Under the East India Company.



CHAPTER II

The Birth and the Constitution of the East India Company —(1600—1708)

The Charter of 1600—Its constitution—"The Regulated Company and separate voyages—The Joint Stock Company—The Stewart Charters—Charter of 1683—A constitutional question raised—Two rival Companies—Union.

The Portuguese and the Dutch trade with the East Indies had already roused the people of England to an urgent desire to share in the profitable trade with their European rivals, and on the last day of December, 1600, two hundred and fifteen English knights, aldermen and citizens, headed by Lord Cumberland, obtained from Queen Elizabeth a Charter forming them into "the Governor and Company of Merchants of London, trading in the East Indies."

The Elizabethan Charter, 1600.

Constitution.

The Company were to elect annually one Governor and 24 "Committees". The 24 Committees were *individuals and prede-*

One Governor 24 'Committees.'

cessors of the later Directors. They were to carry on all business by means of a Common seal. Thomas Smith, Alderman of London, became the first Governor under the Charter.

The Charter was in the first instance granted only for 15 years, and was to
 15 years' lease. terminate on 2 years' notice in case the trade proved unprofitable to the realm. But if, on the other hand, the realm profited by the trade, the Charter might be renewed for a further term of 15 years.¹ The Company were to have the following powers and privileges.

1. Below is a specimen of the language in the original Charter: Provided also that if it shall hereafter appear to us, our heirs or successors, that this grant or the continuance thereof, in the whole or any part thereof, shall not be profitable to us, our heirs or successors or to this our realm, that then, and from thenceforth, upon and after two years' warning, to be given to the said Company, by us, our heirs or successors, under our or their privy seal, or sign manual, this present grant shall cease, be void and determined, to all intents, constructions and purposes:furtherthat if at the end of the said term of fifteen years, it shall seem meet and convenient into the said Governor and Company of merchant of London, that this present grant shall be continuedand if that also appear unto us etc. that the continuance thereof shall not be prejudicial to this our realmthere we will grant, new letters patentsfor and during the full term of English years the next following."

(1) They could use any trade route and had the monopoly of trading between "the Cape of Good Hope and the Straights of Magellan" with power to grant licenses to trade, unauthorised traders being liable to forfeiture of all their goods and to other penalties.

(2) They were empowered to make reasonable laws, constitutions, orders and ordinances not contrary or repugnant to the laws, statutes or customs of the English realm—for the good government of the Company's affairs.

(3) The Company were also given the power to impose such fines or penalties as might be deemed necessary to enforce these laws.

(4) The members of the Company, their sons at the age of 21 years and their factors, apprentices and servants had the exclusive trading privileges of the Company.

Members could gain full admission to the Company nominally through the avenue of apprenticeship or service. But strangers could be admitted,

provided they offered suitable contribution to the adventure of the Company. Ilbert says that the Charter had no reference to, and the corresponding qualifications for "membership."

It appears from the Charter that the adventurers had undertaken to contribute towards the first voyage certain sums of money: failure to pay their contributions was to involve 'removal' of the defaulters. The Charter does not specify the amount of the several subscriptions which, however, amounted in September 23, 1600, to £68,373,¹ and the subscribers numbering 101 men. Each adventurer was equally eligible for the office of the Committee and had equal voting power in the General Court.² The Company, thus, was no more than a loose form of association to which the City Companies then belonged under the name of "Regulated Companies."

"Regulated Companies" and separate voyages.

The members of such a Company were subject to certain common regulations and were entitled to certain common privileges but *each of them traded on his own separate capital, and there was*

1. History of British India by Roberts p. 23.

2. *i.e.*, the Court of the subscribers (afterwards known as proprietors.)

no joint stock. This explains the fact that during the first 12 years of its existence the Company traded on the principle of each subscriber contributing separately for the expense of each voyage and reaping the whole profit of his subscription. The Company during these 12 years was technically a "Regulated Company" and the voyages were "separate voyages."¹

But after 1612 the subscribers threw their subscriptions into a "Joint stock" and thus converted themselves from a regulated company into a Joint stock company which, however, differed widely in its constitution from Joint Stock Companies of the present day.

Joint Stock Company
1612.

The first Stewart King, James I, renewed the charter of Elizabeth in 1609, and by this renewal the fifteen years' lease was made perpetual, subject to termination after three years' notice, on proof of injury to the nation. Another change made in 1609 was the grant of the

Changes under the
Stewart Charters.

1. There were nine separate voyages. Captain Best's naval victory off Smally over the Portuguese and the building of the first English factory at Surat concluded the ninth and the last separate voyage.

legislative power of issuing a commission to its 'general' in charge of the voyage to inflict punishments for non-capital offences and to put in execution martial law, subject to the proviso of requiring the verdict of a jury in the case of capital offences.

In 1669 Charles II handed over to the East India Company his marriage dowry, the island of Bombay, which he had received from the king of Portugal, and in 1677 he granted a Royal Charter empowering the Company to coin, in Bombay, money to be called by the name of rupees and pices.

A mint for that purpose was established in Bombay similar to one established in Madras some years earlier for the coinage of Pagodas.¹

For the administration of justice in Bombay at this time there were two courts—(1) a lower court with limited jurisdiction, consisting of a civil officer of the Company and two Indian officers; and (2) a supreme court consisting of the Deputy Governor or Vice

Charter of 1683: right of establishing a court of judicature in Bombay.

1. Pagoda—a Madras coin equal to 8 shillings in English money.

President and a member of the council whose decisions were final and without appeal except in cases of the greatest necessity. The Charter of 1683 (Charles II) empowered the Company to establish at such places as they might desire a court of judicature, consisting of one person "learned in the civil laws" and two persons to be appointed by the Company to try cases "according to the rules of equity and good conscience and according to the laws and customs of the merchants."

In 1687 James II granted to the Company the powers of establishing a Municipality in Madras, consisting of a mayor, twelve aldermen and sixty or more citizens.

1687—a Municipality in Madras.

In 1708 the Company entered into a new phase and the history preceding it is interesting. For many years individual interlopers had defied the Company's monopoly of the eastern trade and one of the most famous of these interlopers was Thomas Pitt, grandfather of the Earl of Chatham, who made a large fortune by unlawful trading. After the fall of the Stewarts, who had zealously guarded the Company's monopoly, the enemies of

Rival Companies.

the London Company associated themselves with the Whig Party and in 1690 formed themselves into a new company by an Act of Parliament. The monopoly of the old company was thus openly challenged. This raised an important constitutional question, namely whether the Crown could grant a

A constitutional question.

monopoly of trade without the authority of Parliament. This question had once already been discussed and decided in favour of the Crown's prerogative by the Lord Chief Justice Jeffreys in the famous case of the *East India Company vs. Sandys*.¹ Now it was again discussed and decided in favour of the London Company and Crown's prerogatives; for it must be remembered that old London Company was born out of the Royal Charter of 1600. The Charter of 1693 renewed the monopoly of the London Company. But when in 1694 the old Company seized the vessel *Redbridge*, bound for the East Indies for

1. In this case the Company brought an action against Mr. Sandys for trading to the East Indies without a license. The Lord Chief Justice gave the judgment for the plaintiff Company and laid down that by the laws of the nation the regulations of trade and commerce are *reckoned Inter Juris Regalia i.e.* within the jurisdiction of the Royal prerogative

trade without a license, Parliament intervened and declared "that all subjects of England have equal rights to trade with the East Indies unless prohibited by Acts of Parliament." Thus the power of controlling the trading privileges of the East India Company was transferred from the ministers to Parliament.¹ Henceforth the Company's affairs were to be regulated not by a Charter but by an Act of Parliament.

This ruling saved the New Company of 1690 from annihilation, and an Act of Parliament converted this new association into a "General Society" to which was granted the exclusive trade to India saving the rights of the Old Company until they expired in three years' time. A large majority of the subscribers to the "General Society" formed themselves into a Joint Stock Company and were incorporated by the Crown under the name of "English" Company to distinguish it from the "London" Company.

Thus two rival Companies were set up to trade with India and the struggle which continued from that

'United Company'.

1. The Reader should note that the Cabinet form of government was not yet fully developed in England and the ministers obeyed more the orders of the King than the dictates of Parliament.

time with unceasing hostility and to the great loss of both, came to an end in 1702 when, forced by Government at home, they declared a truce and a preliminary union pending negotiations for full and final settlement. After six years of negotiation and compromise the "London" and English Companies were amalgamated under the name of the "United Company" in 1708—a name which it continued to bear till the Charter Act of 1833 (3 and 4 Will. IV, C. 85) for the first time officially styled it "the East India Company!"

CHAPTER III

The Regulating Act, 1773: The First Interference of the Crown in the Internal Administration of the East India Company

The Company's affairs in 1773—The necessity for the Crown's interference—Its importance—The Regulating Act—Provisions—Defects—Possibility of a deadlock—Undefined jurisdiction.

The year 1773 is the second great landmark in the history of the East India Company witnessing great changes in its constitution as a result of the step which the crown, for the first time, took to interfere with the internal affairs of the Company with a view to regulating them. Sixty-five years had elapsed since the formation of the 'United Company' and within these years the Company's position became quite different from what it had been in 1708. It ceased to be a mere trading company. The fatal weakness which overtook the Central Government at Delhi after the death of Aurangzeb in 1707 was taken

The Company's position in 1773.

advantage of by the English and the French East India Companies to gain political power in India. The capture and defence of Arcot (1751), the battle of Caveripak (1751), the relief of Calcutta (January 1757), the battle of Plassey (June, 1757), the capture of the Northern Sarkars (1758), the Third battle of Panipat (1761), the battle of Wandiwash (1760), followed by the capture of Pondichery (1761), the battle of Buxar (1764), and the Treaty of Allahabad (1765) gave the English Company the territorial sovereignty of the whole of Bengal extending as far as Allahabad in the North-West, and including considerable portions of the Bombay and Madras Presidencies.

The necessity for interference.

The grant of the Dewani of the provinces of Bengal, Behar and Orissa (by the Treaty of Allahabad) involved, in addition to the collection and disbursement of revenue, the transference into the hands of the Company of the whole administration of civil justice. The Company could no longer remain confined to trade alone, but were called upon to deal with higher and nobler problems—namely those of government—a task which they were ill fitted to perform satis

factorily.¹ Hence the interference of the Sovereign Powers which was both necessary and justifiable.

The Act which was passed for regulating the affairs of the Company with a view to "establishing certain regulations for the better management of the affairs of the East India Company, as well in India as in Europe"² is known as the Regulating Act.³ It is of supreme importance to students of Indian constitutional history in as much as it introduced radical changes in the constitution of the East India Company and witnessed the first step towards interference of the Crown with the internal administration of the Company's affairs. The Act contained the following provisions:

Firstly, the Act, among other things, provided that *the Directors should henceforth be elected for four years, and one fourth of their*

Directors' election by rotation.

1. "Throughout the latter half of the eighteenth century was noticed a gradual growth of a feeling that the nation itself through Parliament, rather than through a private trading company, must ultimately be responsible for British rule in India. Clive himself suggested that the Dewani of Bengal and the power that went with it might possibly be an object—too extensive for a mercantile company."—History of British India by Roberts p. 179.

2. Preamble 13, Geo. 3, C. 63 (The Regulating Act).

3. 13 Geo. 3, C. 63.

number were to retire every year, remaining at least one year out of office.

The object of this provision was to prevent the formation in the Directorate of a *junto* with a rigid and narrow outlook, by infusing fresh blood into it every year.

Secondly, in order to invest the Government of England with some powers of supervision and advice over the manner in which affairs in India were governed by the Directors, it was enacted that *the Directors were to lay before the Treasury¹ all correspondence from India dealing with the revenues, and before a Secretary of State² everything dealing with civil and military government.*

Thirdly, finding that it was more convenient for Home authorities to deal with one Central Head than with several Governments in India, and considering that it was wise to have unity of action and a uniform diplomatic policy with regard to the Indian Powers, it was sought to centralize the

1. Government.
2. An important minister of the Crown and a member of the Cabinet.

Government of India by enacting that *the Governor of Bengal should be made Governor-General*

The first step towards centralization of Government.

Section 7 and 10 Geo. 3 c. 63.

of Bengal and the Presidents¹ and Councils of Madras and Bombay should be made subordinate to the Governor-

General and his Council in Calcutta in matters of peace and war. The Governor-General and the four Councillors were named in the Act and were appointed for five years.² All future appointments were to be made by the Company.

Fourthly, to prevent the Governor-General playing the autocrat it was

The Governor-General's Council.

Sections 8 and 9—13 Geo. 3 c. 63.

enacted that he (Governor-General) should be assisted and 'controlled' by a Council

of four members—the voice of the majority binding the Governor-General even against his wish. The Governor-General was given a casting vote only when there was an equal division of opinion.

1. The Governor of Madras and Bombay were often called Presidents.

2. Since that time five years have always been the traditional term of office for all members of the Central and Provincial Governments in India.

Fifthly, section 36 of the Act empowered the Governor-General and Council to make from time to time such rules and regulations for Bengal and the subordinate Presidencies as they might deem reasonable and to impose fines and forfeitures for their breach. Those rules and regulations were, however, not to have the force of law until registered and published by the Supreme Court of Judicature (established by the same Act) and were subject to being set aside or repealed by the King in Council.

Power of legislation to the Central Government.

Section 36—13 Geo. 3 c. 63.

Sixthly, in order to set up an independent and effectual check upon the executive government a *Supreme Court of Judicature* was set up in Calcutta, consisting of a Chief Justice and three Puisne Judges to be appointed by the Crown and to hold office during good behaviour.

The Supreme Court.

Sections 13, 14, 15—
13 Geo. 3 c. 63.

Thus the Supreme Court was a King's Court and not a Company's Court and held jurisdiction on His Majesty's subjects in the provinces of Bengal, Behar and Orissa. In civil cases, an appeal from the decision of the Supreme Court might be made to the Privy Council in London. It is interesting

to note, however, that the status of the Chief Justice, so far as his salary was concerned, was much below the Governor-General's and even lower than that of the councillors. The Chief Justice was granted a salary of £ 8,000 per year, while the Governor-General received a salary of £ 25,000 and a councillor £ 10,000 annually.¹

There were several defects in the Act from the administrative point of view. Provision 4, making the decision of the majority in the Council binding on the Governor-General in all cases, even against his wish, was defective, as was later shown in the case of Warren Hastings. On the Governor-General, as the head of the administration, and

not on his Councillors, lay the responsibility for the actions taken, yet a hostile majority in the Council could oppose their chief at every step and as such could create a deadlock in the government by indiscriminate obstruction. For though the Council itself could not pass orders it could prevent the Governor-General from doing so and thus could make government impossible. This administrative defect

1. Salaries are now lower.

was later removed by an Act of Parliament in 1786.

Provision 6 also contained the germs of serious defects. Although the intention of the provision was good enough, namely "to secure to the Crown the supremacy of the whole administration of Justice and to place an effective check upon the affairs of the East India Company,¹ the jurisdiction of the new Supreme Court in relation to Company's High Court at Calcutta, set up by Warren Hastings a year earlier, was not *clearly defined*, and the result was that there was much undue interference on the part of the new court

Undefined Jurisdiction

with matters which were within the province of the Company's High Court. This undefined relation between the Supreme Court and the Company's High Court on the one hand, and the Supreme Court and the Executive Government on the other, produced a plentiful crop of disputes between the Governor-General and the Chief Justice Sir, Elijah Impey, who, however, happened to be a school fellow and a close friend of Warren Hastings.

"The Court issued its writs extensively throughout the country. arrested and brought to Calcutta all

1. Indian Constitutional Documents—pp. XIII—XIV.

persons against whom complaints were lodged—zamindars, farmers and occupiers of land, irrespective of their rank or consequence in the country. Revenue defaulters were set at liberty under a writ of *habeas corpus*; the criminal administration under the Nawab was declared to be illegal; the mufussil civil courts were held to have no valid jurisdiction; and the Supreme Court, itself, modelled on the courts of England, introduced the whole system of English law and procedure.”

“Nobody knew how to define the classes of persons, European and Indian, who came under the jurisdiction of the court, or how far the court had power outside the limits of the European settlement. Endless problems arose out of the loose wording of the Act, and from the manifest absurdity of applying the English law of the eighteenth century to the people of Bengal. Unfortunately, the statute had been drawn by persons who knew nothing about India and who failed to consult Warren Hastings or any body else who had any knowledge of the subject. The Judges administering the land were equally ignorant of Indian conditions.”¹

To put and end to this unseemly dispute the Governor-General hit upon the clever plan of appointing the Chief Justice of the Supreme Court to be the head of the Company's High Court also

1. The quotations are partly from Indian Constitutional Documents and partly from Smith's Oxford History of India.

with a handsome salary¹ Although it brought peace and put an end to the 'intolerable situation'² in India, the arrangement was disapproved by Parliament and Impey was recalled a year later. This defect was however removed by a subsequent Act of Parliament.³

1. £ 6,500 a year.
 2. History of British India by Roberts p. 213.
 3. The Ammending Act of 1780—81.
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CHAPTER IV

Pitt's India Act, 1784: The Double Government

The Act of 1781—A Committee of Enquiry—A constitutional question raised—The Fox India Bill defeated—Pitt's India Act—Its importance—The Provisions—The Board of Control—Its Constitution, Powers and Privileges—The Secret Committee—Reduction of the Governor-General's Council—Further Centralisation of the Indian Government—The Non-Intervention Policy—Patronage left with the Directors—Jurisdiction of the Indian Courts extended.

For Seven years after the passing of the Regulating Act popular attention had been mainly occupied with the revolt of the North-American Colonies and the war with France, but from 1780 India again attracted the attention of the politicians in England. In 1781 a New Charter Act prolonged the Company's privileges for ten years and still further extended the control of the state over it in two ways: (1) three-quarter of any surplus, after a dividend of eight percent had been

1781

1. paid, was to go to the Treasury; (2) as the Regulating Act had compelled the Directors to communicate to minister all despatches received *from*¹
2. India relating to revenue, and to civil and military affairs, the New Charter Act now compelled them to submit to inspection and advice all such despatches sent *to* India. The Act also exempted the Governor-General and Council of Bengal, jointly
3. and severally, from the jurisdiction of the Supreme Court for anything ordered or done in their public capacity. It also empowered the Governor-General and Council to frame Regulations for the Provincial
4. Courts of Justice without reference to the Supreme Court.

In the same year Parliament appointed two Committees, the first 'select' and the second a 'Secret,' to inquire into the administration

A Committee of Enquiry.

of Justice in Bengal, and to investigate the causes of the war in the Carnatic. These Committees submitted the reports of their enquiry to the House of Commons which, thereupon, resolved, in 1782, that Hastings and the President of Bom-

1. Compare Provision 2 of the p. Act of 1773 p. 22 of the Book.

bay should be recalled from office. The Court of Proprietors of the East India Company resisted. A new constitutional question was raised: should the East India Company be bound to abide by a resolution passed by the House of Commons alone? The fall of the Rochingham Ministry, however, saved the Governor-General, and the constitutional issue remained undecided.

A Constitutional question raised.

The Coalition-Government of North and Fox took office in 1783 and in the same year Fox introduced his India Bill, the most important provisions of which were:

The Fox India Bill: defeated in the Lords

(1) That for four years all political and military power should be vested in seven Commissioners appointed at the first instance by Parliament and afterwards by the Crown;

(2) That all commercial business was to be controlled by nine 'assistant directors' to be nominated at first by Parliament and afterwards by the Court of Proprietors. The effect of the Bill, if passed, would have been the wholesale transfer of patronage from the Company to nominees of the Government and this offered the chief ground of attack by Pitt who declared that the

corrupting power of the ministers of which they had already in plenty, would be extended by this act. The Bill, however, passed the House of Commons by an easy majority, but was rejected by the upper House through George III's influence over the Lords. The Coalition-Government were at once dismissed, and the Opposition leader, Pitt, came into office and carried his famous India

The Pitts India Act,
1784.

Act in 1784.

The Pitt's India Act 1784 (29 George III

Sess. 2, C. 25)¹ makes another landmark in the growth

of the Indian constitution, for it laid down provisions which transferred substantial powers to the hands of the government and "practically made the East India Company, in every thing except in patronage and commerce, a subordinate department of the state."² The provisions of the Act were:

Firstly, a Committee of six commissioners, known as the Board of Control was set up, consisting of the

The Board of Control.

1. The Act is Commonly known by its author's name as Pitt's India Act of 1784: 24 Geo. III sess. 2, C. 25.

2 Roberts—History of India p. 215.

Chancellor of the Exchequer, a Principal Secretary of State, and four other Privy Councillors. The Secretary of State was to be its President. In the absence of the said Secretary, the Chancellor of the Exchequer and in his absence the senior-most Privy Councillor according to his rank in seniority of appointment would preside. The President was to have the casting vote.¹

Since the Board of Control rarely met, its President (Mr. Dundas being the first to hold this office) did all the work in the name of the Board and held almost the same position as the present Secretary of State for India does—only the name was different.²

Secondly, the Commissioners forming the Board were “invested with superintendence and control over all the British territorial possessions in the East Indies

Powers and Privileges
of the Board-Provisions
2, 3, 4 and 5.

1. A President of a Board or Committee has usually two votes—one ordinary as a member of the said Board or Committee, and the other as President when the division is equal. The latter vote is called the ‘Casting vote.’

2. The Preamble and Sections 2 and 3 and 4—24 Geo. III Sess. 2 C. 25.

and over the affairs of the United Company of Merchants trading thereto " and the Company's affairs included civil, military and revenue matters.¹

Full control over civil military and revenue affairs.

Thirdly, no member of the Board including President shall be disqualified from being elected a member of Parliament and, if already elected, from retaining his seat. The Secretary and his staff were to receive 'such salaries as His Majesty shall direct.'²

No Bar to Parliamentary Membership.

Fourthly, members of the Board were empowered to have access to all papers belonging to the Company. The Court of Directors were to deliver to the Board within eight days after the holding of the respective courts copies of all minutes, orders, resolutions and other proceedings of the Court of Directors or the Court of Proprietors so far as they related to the civil or military government or the revenues of territorial possessions in the East

Access to all proceedings of the Court of Directors.

1. Section 3 of the Pitts India Act, 1784.
2. Sections 7 and 10 Ibid.

Indies. The Board, however, was to return them within fourteen days of their receipt. The amendments, alterations, or orders made therein by the Board should be binding on the Directors.¹

Fifthly, the Court of Directors were also to submit to the Board all letters, despatches and orders *to* and *from* India, for inspection, alterations, suggestions and orders; and the Court of Directors were to transmit to the Indian Governments the letters and despatches in the shape in which they came from the Board. In case the Directors 'neglected' to submit to the said Board their intended despatches within fourteen days of the demand thereof, it would be lawful for the Board to prepare and send to the Directors and to any of the Governments in India such orders or instructions as they might think proper; and the Court of Directors were to be bound to send them as they were without alterations. If the Court raised the question that the said orders or instructions related to the points not connected with the civil or military governments or revenue,

And to all despatches
to and from India.

1. Sections II of The Pitts India Act.

the question was to be decided by the King in Council.¹

Sixthly, a Secret Committee consisting of three members of the Court of Directors was constituted through which the Board was to transmit such orders to India as required secrecy, e.g., orders relating to diplomacy.²

Thus the rest of the 21 members of the Court of Directors were excluded from any share in the political power; and the Court of Proprietors, whose independence had offended the ministers, was deprived of any right to annul or suspend any resolution passed by the Court of Directors.

Seventhly, The Governor-General's Council at Calcutta was reduced to three members of whom the Commander-in-Chief must be one.

He should have voice and precedence in the council next to the Governor-general. The original four members of the Council appointed under the Regulating Act were allowed to exist so long as one of them did not die, resign or was

1. Sections 12 and 13 of the Pitts India Act.
2. Sections 15 and 16 Ibid.

not removed. The Governor-General was allowed the casting vote.¹

Eighthly, the Governments of the Presidencies of Bombay and Madras were modelled on that of Calcutta so as to consist of a Governor and three Councilors of whom the Commander-in-Chief of the Presidency must be one, having the precedence and voice in the Council next to the Governor. But in case the Commander-in-Chief of all the forces in India happened to be present in any of the Presidencies, the Commander-in-Chief of the said Presidency shall yield place in the Council to his superior during the period of his stay.²

Ninthly, the control of the Governor-General and Council over the Presidencies of Madras and Bombay was enlarged and was declared to extend to all such points as related to transactions with coun-

Governor-General's control over minor Presidencies enlarged.

1. Sections 18 and 21 of the Pitts India Act.
2. Section 19—Ibid.

The Presidency Commander "shall have a seat but no voice."

try Powers, or to war or peace or to the applications of revenues or forces of such Presidencies and Settlements in time of war. The Governments of the subordinate Presidencies disobeying orders and instructions of the Governor-General were liable to be suspended.¹

This clause was a further step towards the centralisation of the Indian Government.

Tenthly, section 34 of the Act laid down what is known as the Non-Intervention Policy. It declared that "to pursue schemes of conquest and extension of dominion in India are measures repugnant to the wish, honour and policy of the nation," and so the Governor-General and Council were forbidden to declare war or peace against any of the country princes or states in India or conclude any treaty guaranteeing the possession of any country princes or states without the express authority of the Court of Directors or its Secret Committee, in any case except for self-defence or defence of an ally.²

The Non-Intervention Policy.

1. Sections 31 and 35 of the Pitts India Act.
2. Sections 34 of the Act—Ibid.

Eleventhly, patronage i.e., the right of appointing the Company's servants was retained in the hands of the Court of Directors, the Commander-in-Chief alone being left to the nomination of the crown.¹

Patronage left with the Directors.

The total effect of the provisions of the Act stated above was a further step towards achieving unity and centralisation of the Government of India and the setting up of the 'Double Government' of the Crown and Company which subsisted with minor changes until 1858, when the shock of the mutiny forced the hands of the minister to deprive the Company of all share in the government of India.

Lastly, a group of clauses extended the power of the Courts of Justice in India to punish British subjects, including servants of the Company, for *all* offences committed in India including the acceptance of gifts or presents. The Company's servants, dismissed by any competent court, were forbidden to be restored by the Company, and the Governor-General was empowered to issue War-

1. Section 17. The Pitts India Act, 1784. The crown, however, retained a negative over all appointments.

rants, under his Hand and Seal, for securing and detaining in custody any person or persons suspected of carrying on any illicit correspondence with any Indian or European Power which might be dangerous to the peace or safety of the settlement of the British possessions in India.¹

1. Sections 44, 45, 46, 51 and 53 of the Pitts India Act—24 Geo. III Sess. 2 C. 25.

CHAPTER V

The Gradual Destruction of The Company's Commercial and Political Power 1793—1858

The Statute of 1786—The Charter Act of 1793—A slight attack on the monopoly—Political changes—Patronage left to the Company—The Charter Act of 183—The Charter Act of 1833—Total destruction of the trade monopoly—Political changes—The Charter Act of 1853—The first Legislative Council—The Government of India Act of 1858—The transfer of the Government to the Crown.

A small but important change was made in the constitution of the East India Company in 1786 when a statute¹ passed during the regime of Dundas, the first President of the Board of Control, gave the Governor-General, for the first time, power to overrule the majority of his Council *in certain cases*.²

2. 26 Geo. 3 C. 16: also see Roberts' History of India p. 222.

"In cases of high importance, especially affecting the public interest and welfare; or when any measure shall be proposed whereby the interest of the Company or the safety or tranquility of the British possessions in India may, in the judgment of the Governor-General, be essentially concerned."

Further opportunities for introducing changes in the constitution occurred every twenty years at the time for the renewal to the

The Chartre Act of 1793.

Charter. The Charter had been renewed for 20 years in 1773 and when the time of its renewal again drew nigh the questions concerning (1), the extension of the monopoly, and (2), the retention of the political rights of the Company, agitated the English public. Fortunately the year 1793, i.e., the year for the renewal of the Charter, coincided with the retirement of Lord Cornwallis, who, because of his many important and successful reforms, left a favourable "balance sheet." If the Charter had chanced to terminate ten years earlier, popular felling would have gone hard against any extension of the privileges, commercial or political. As it was, Parliament agreed to renew the Charter for twenty years more and passed the Charter Act in 1793.

The Company's entire monopoly of Trade was retained for another twenty years except that trade to the amount of 3,000 tons of cargo was thrown open to the public.

A slight attack on the monopoly.

Although the commercial privilege of the Company was left almost intact a great many Political changes were made (1) The Board of Control was reduced to three members;¹ (2) The Governor-General's power of overruling his Council, given by the statute of 1786, was reiterated, and the same power was extended to the Governors of the minor Presidencies² (3) the Governors of Madras and Bombay were to send to the Governor-General and Council at Calcutta true copies of all the orders, resolutions and acts in council of their Governments. (4) The Governor-General and Council were empowered to superintend, control and direct the action of the Government of Madras and Bombay in all matters relating to transactions with the country Powers and the said Presidency Governments were to obey the orders from the Calcutta Government if not contrary to instructions received from England.³ (5) The Governments of Madras and Bombay were expressly forbidden to declare war or conclude peace with any Indian Prince except

1. Section III of the Charter Act of 1793.

2. Section XLVII Ibid.

3. Sections XL, XLI, and XLIV Ibid.

on orders from Calcutta or from the Directors.¹

It will be seen that provisions 3, 4 and 5 were another step towards centralisation of the Indian Government by making the minor Governments more and more subordinate to the Supreme Government at Calcutta. (6) The Governor-General's Council, and the Councils of Madras and Bombay were reduced to three members each, the Directors being empowered to appoint them from among the senior merchants of at least ten years' standing. The Commander-in-Chief of each Presidency was to form an additional member with the same rank and privilege in the Council as set forth by the Act of 1784.² (7) The title of the Governor-General *and* Council was changed to the Governor-General *in* Council and this is the style which has continued up to the present day. The two Presidency Governors also were similarly styled the Governor *in* Council of Madras and Bombay respectively.³

1. Section XLIII of The Charter Act of 1793.

2. Sections XXIV and XXV of The Charter Act of 1793. Also compare provisions *seventh* and *eighth* of the Pitts India Act pp. 38 and 39 of this book and note that the Commander-in-Chief of the Presidency of Bengal was the Commander-in-Chief of all the forces in India.

3. Section XXXIX of The Charter Act of 1793.

Patronage, enjoyed by the Company, was left untouched and was vested more clearly in the Company by sections XXV and XXXVI which declared that the Governor-General, two Governors, the members of their Councils, the Commander-in-Chief of all the forces in India as well as the Provincial Commander-in-Chief were to be appointed or dismissed by the Directors, subject to the approval of the Crown.

An important change was made in the constitution of the Government of Madras by the Government of India Act of 1800¹ which gave that province legislative powers for the first time, and a Supreme Court of Judicature like that of Bengal. Bombay obtained legislative powers in 1807 and a Supreme Court in 1823.²

During the twenty years which had elapsed since the passing of the Charter Act of 1793, the same questions whether the monopoly of trade and the political rights of the Company should be retained or altogether abolished, never left for a moment the minds of English politicians. Two

1. 39 and 40 Geo. 3 c. 79.

2. The Indian Bishops and Courts Act of 1823 (4, Geo. IV c. 71.)

schools of thought, equally persistent and strong in their views, arose. One school strongly held that it was against public interest and sound principles of political economy to allow the monopoly of the Indian trade to remain with the E. I. C. any longer. This school held that a trading company whose sole concern was, as it should be, trade and dividends, was ill-fitted constitutionally to play the role of a Government. The views of this school of thought were ably voiced by Earl Grenville who said that "no sovereign ever traded for a profit: and no trading company ever yet administered government for the happiness of its subjects." He declared "that the crown should definitely take over the political and territorial rights of the Company."

On the other hand, the school of opinion that was for upholding the Company's privileges, argued that it would be folly to oust the Company from its political position and to transfer the immense patronage of the Indian services from the Court of Directors, who stood apart from party system, to ministers of the Crown who were obsessed with the idea of purchasing the votes and allegiance of their followers, especially when under the constitution, as it stood then, the government had ample

control over Indian affairs and could easily set matters if anything went wrong. All the greatest Indian authorities—Lord Teighnmouth, Munro, Malcolm and Lord Wellesly were opposed to the abolition of monopoly and even Warren Hastings, then an old man of eighty-one, threw his weight against change of any kind. Curious as it may sound now, the Directors were also strongly opposed to the admission of even missionaries in India.

The Act, renewing the Charter for another twenty years, was however passed carrying along with it the following provisions: (1) confirmation of the Company's monopoly of the China trade alone for 20 years and abolition of the monopoly of the Indian Trade which was thrown open to all British subjects; (2) admission of missionaries by license; (3) establishment of a Bishop at Calcutta and an Archdeacon for each of the three Presidencies; (4) a grant of a lakh of rupees annually for public education.¹

1. Education was interpreted to mean the encouragement of Sanskrit and Arabic only and the money was spent to create and maintain an Oriental Department for translating English books of Science into Indian classics until 1835 when Lord William Bentinck's despatch (based upon Macaulay's famous minutes) marked the somewhat tardy

Thus, although a large gap was made in the trading monopoly of the Company in 1813, the political rights of the Company remained virtually intact.

But things could not go on like this much longer. Parliament had undergone a revolution in its constitution by the famous Reform Act of 1832, and ideas of Free Trade were every where triumphant. These events could not fail to react on the relation between the Company and the Crown. So when the time of the renewal of the Charter (which was to expire in 1833) drew near, the trend of debates in Parliament on the Indian question clearly showed that the Company, which had lost its monopoly of the Indian Trade in 1813, could not hope to save its monopoly of the China Trade.

So it happened. By the Charter Act of 1833 the Company not only lost the monopoly of the China Trade but ' was not even permitted to compete in the China Trade on level

1833. The Charter Act of 1833.

acceptance by government of a new policy which was to devote the available funds to the maintenance of secondary schools and colleges of western learning to be taught through the medium of English.

terms with private traders, and was thus forced to divest itself of its commercial character altogether, and to part with its assets at a valuation. At one time it hardly appeared probable that it would retain its existence as a governing body, but ministers shrank from taking over the whole administration of India, and the Company remained in an anomalous position, half a private corporation, half a government department, its dividends now fixed at $10\frac{1}{2}\%$, a charge upon the revenues of India.¹

Apart from the radical commercial change as stated above, such extensive political changes were made as marked an important stage in the evolution and consolidation of the system of government fashioned for our country at the hands of British rulers :

- (1) It was enacted that no official communications² should be sent to India by the Court of Directors until
- Political Changes.

1. History of British India by Roberts pp. 306—307.

2. Section 47, of the Charter Act of 1833. Official Communication, according to this section, refers to "rules for the procedure of the Governor-General in Council in the discharge and exercise of all powers vested in him by the Act."

they had first been submitted to and approved by the Board of Control. After approval thereof they were to be laid before Parliament for ratification.¹

(2) The official designation of the Governor-General of Bengal in Council was changed into the Governor-General of India in Council.²

(3) The Presidencies of Madras and Bombay were definitely and finally subordinated to the control of the Governor-General of India in Council.³

(4) The Governor-General in Council was empowered to pass Acts instead of Regulations and these Acts, unless disallowed by the home authorities, were to have the same force as Acts of Parliament and were to be binding over the whole of India. The Governors of Madras and Bombay were deprived of all legislative power,⁴ only the right of proposing draft schemes was left to them.⁵ (5) In order to help the Government of India in drafting laws and resolutions, a fourth

1. Compare provision 5 of the Pitts India Act p. 37 of the book.

2. Section 39 of the Charter Act of 1833. Cf. provision 7 of the Charter Act of 1793.

3. Sections 65, 66 and 68 Ibid.

4. The power which was given in 1800 and 1807 respectively, vide p. 47 of the book.

5. Sections 43, 44, 45, 65 and 66 of the Charter Act of 1833.

member, known as the Law member, was added to the Governor-General's Council, and the said member was to sit and vote *only* at meetings for making laws and regulations.¹ (6) A Law Commission, consisting of the Law Member, an ordinary member of the Council and one civil servant, was appointed to draft the Indian Penal Code.² (7) A fourth Presidency was created with its capital at Agra. This Presidency was afterwards reduced to the Lieutenant-Governorship of the North-West Provinces in 1835 by an Act of Parliament. At the same time the Governor-General was authorised to appoint a member of his Council to be Deputy Governor of Bengal.³ (8) Madras and Bombay were each given a Bishop, and the Bishop of Calcutta was to be the Metropolitan Bishop in India, the highest ecclesiastical dignitary here⁴ (9). The Court of Directors

1. Section 40 The Charter Act of 1833. The first Law member was Thomas Macaulay whose masterly Educational Despatch was instrumental in settling in favour of the Occidentalists the famous controversy as to whether English or the oriental languages should be the medium of instruction.

2. The Indian Penal Code, drafted by Macaulay, received legislative sanction in 1860.

3. Section 69 of The Charter Act of 1833.

4. Section 94 Ibid.

were required by this Act to lay annually before Parliament accounts of Indian revenue.¹ (10) Lastly, the Act laid down the famous principle 'that no native of India should be disabled from holding any place, office, or employment, by reason of his religion, place of birth, descent or colour'.²

The East India Company's Charter was again renewed in 1853 by Act of Parliament,³ but the renewal this time was not for 20 years as heretofore done, but only 'during the pleasure of the Crown'. As on previous occasions opportunity was also taken now on the passing of the Charter Act to effect important constitutional changes :

(1) Section 16 of the Act made it lawful for the Court of Directors, with the permission of the Board of Control, to declare that the Governor-General in Council should not be the Governor of Bengal but that a separate Governor was to be appointed in like manner as the Governors of Madras and

Changes in 1853.

1. Section 116 of The Charter Act of 1833.
2. Section 87 Ibid.
3. 16 and 17 Vict. C. 95—The Charter Act of 1853.

Bombay. From the appointment of such Governor the power of the Governor-General of appointing a Deputy-Governor should cease¹. Until a Governor was appointed the same section empowered the Governor-General to appoint from any of the servants of the Company of at least ten years' standing, a Lieutenant-Governor of such part of the Presidency of Bengal as was not under the Lieutenant-Governor of the North-Western Provinces.²

(2) Power was given to the Court of Directors, acting under the control and direction of the Board of Control, to create a new Presidency whenever they thought fit, and to authorise the Governor-General to appoint a Lieutenant-Governor for such territories as the Court might assign.³

(3) Six members of the Court of Directors, out of a total of eighteen, were henceforth to be appointed by the Crown.

(4) The Commander-in-Chief of the Queen's Army in India was declared Commander-in-Chief of the Company's forces.

1. See provision 7 of the Charter Act of 1833 p. 53.

2. Section 16 The Charter Act of 1853.

3. Section 17 Ibid.

(5) The fourth or the Law member of the Governor-General's Council, provided by the Charter Act of 1833, was now made an ordinary member of the Council, entitled to sit and vote in Council *for all purposes*.¹

(6) A most important and far-reaching constitutional change was made by the establishment for the first time of a miniature Legislative Council by the addition of six members to the Governor-General's Executive Council for the purpose of legislation. Four members, one from each of the four provinces² and the Chief Justice and a puisne Judge of the Supreme Court of Judicature, made up the six members of the Legislative Council. These legislative members, though they enjoyed a salary,³ were to sit and vote at meetings only for making laws and regulations.⁴ They were also called additional members. The Governor-General was to preside in the legislative meetings and was to have a casting vote (i.e., two votes)—and in his absence the Vice President

The First Legislative Council.

1. Section 21 The Charter Act of 1853.
2. Bengal, Madras, Bombay and N.W.P.
3. Fifty thousand rupees.
4. Section 22 The Charter Act of 1853.

appointed by him.¹ No law or regulation made by the Legislative Council was to have force unless and until assented to by the Governor-General, whether he was present or absent in the meeting;² but no law was to be held invalid, simply because it affected any prerogative of the Crown, provided such law received the previous sanction of the Crown.³

(7) The Act threw open the covenanted civil service to public competition and thus deprived the Company of one of their most valued patronages.⁴

(8) By the same Act a commission of six members was appointed in England to report upon the reforms proposed by the Indian Law Commission.

The Charter Act of 1853 was followed a year later by the Government of India Act of 1854⁵ by which the Governor-General in Council, with the sanction of the Court of Directors

The Government of
India Act of 1854.

1. Section 23 The Charter Act of 1853.
2. Section 24 Ibid.
3. Section 26 The Charter Act of 1853.
4. Cf. Provision 11 The Pitts India Act p. 41 of the book.
5. 17 and 18 Vict. C. 77.

and the Board of Control, was authorised to take under his immediate authority and management by proclamation any part of the territories for the time being in possession or under the government of the East India Company and thereupon to make necessary provision for its administration. The manner in which this power has been exercised has been by the appointment of Chief Commissioners who were directly responsible to, and received orders from, the Governor-General in all matters. In this way the Chief Commissionerships of Assam, the Central Provinces, the North-Western Frontier Province, British Beluchistan and the new Province of Delhi came into existence. It was also made lawful for the Governor-General in Council, with the sanction and approval of the Court of Directors, to declare and limit the extent and authority of the Governor in Council or Governor or Lieutenant-Governor of the minor provinces. Section 7 of this Act construed 'India' to mean British India.¹

Four years later the shock of the mutiny shattered the last remnant of the Company's power and abolished the cumbrous system of "Double Govern-

1. Sections 3, 4 and 7 The Government of India Act, 1854.

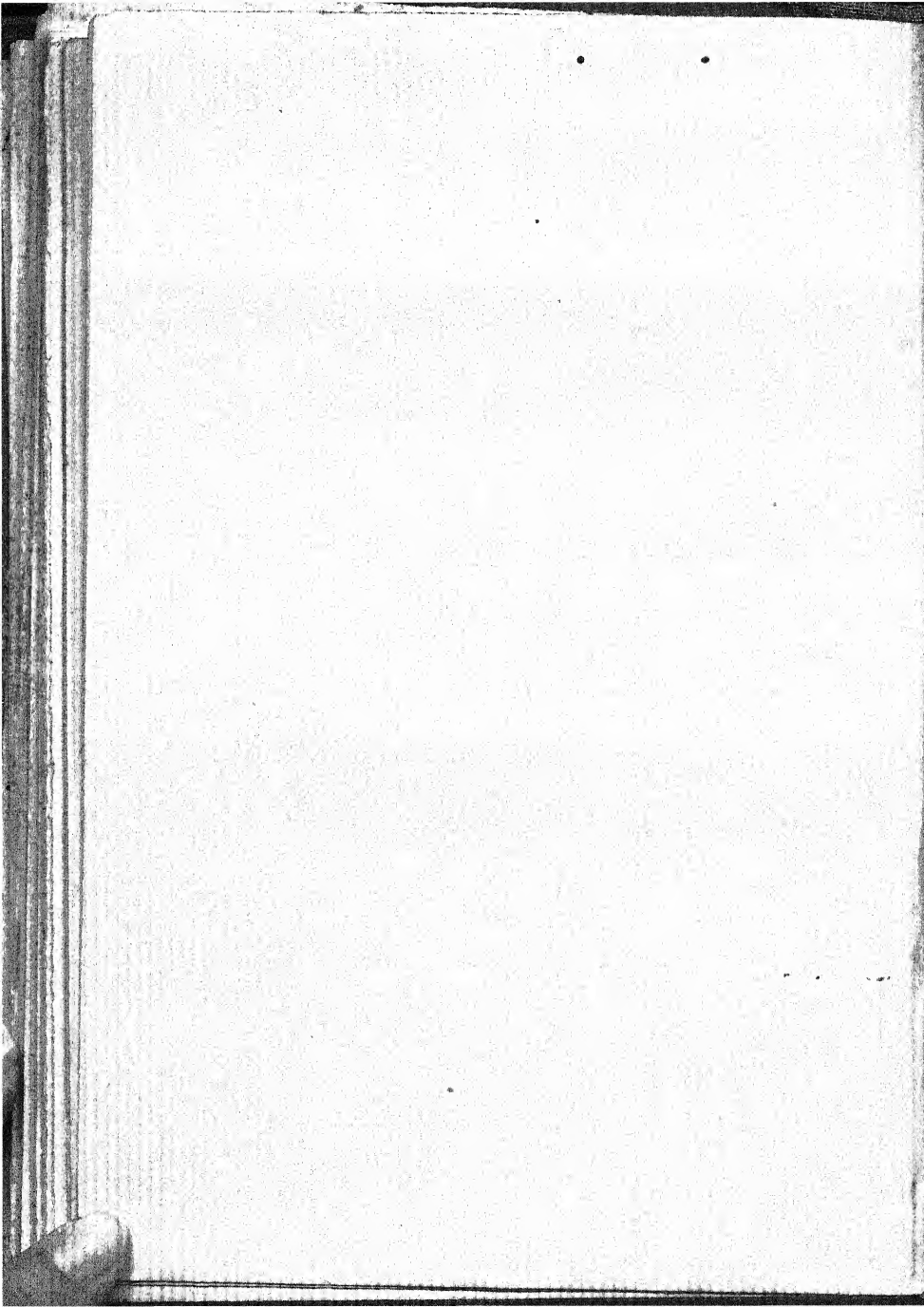
ment" which had been in existence since 1784.¹ The Government of India Act of 1858² transferred the whole administration of India from the hands of the Crown "to be governed by and in the name of the Queen." The Court of Directors and the Board of Control were abolished, and all authority exercised by them was placed in the hands of a minister of the British Government under the designation of the Secretary of State for India who practically stepped into the shoes of the President of the Board of Control. The Secretary of State for India, assisted by a Council, was to manage all the affairs of India in England. This Council originally fifteen in number, and undergoing changes in its constitution by the various amending Acts of 1861, 1876, 1907 and 1919, now consists of not less than ten and not more than twelve members.³ Government in India was not, however, affected in any way by the Act; it was left as before.

This was the last Act passed relating to the

1. See Pitts India Act p. 41 of the book.
2. Act for the Better Government of India (21 and 22 Vict, C. 106).
3. For further details of the constitution and powers of the India Council, as they at present exist, see Chapter XI. p. 117 of the book.

Government of India during the *regime* of the East India Company and the changes made during 1793—1858 in the constitution of the East India Company and its relation with British Government serve to indicate in what direction the drift lay. While in England, the British Government was assuming more and more control over the internal administration of the Company, finally depriving it of all its power, in India the Governor-General in Council at Calcutta was receiving more and more power and finally became the Supreme Head of all the Company's possessions in this country, the other Presidencies being gradually subordinated to Calcutta. The Acts of 1773^{Regul.}, and 1784^{Presid. Act.} and successive Charter Acts of 1793, 1813, 1833 and 1853 mark important stages in the evolution and consolidation of the system of Government fashioned for India at the hands of British rulers especially in two directions: (1) destruction of Director's power *at home* and (2) centralisation of Government *in India*.

PART II
Under the Crown



CHAPTER VI

Growth of The Indian Legislatures 1861—1876

A retrospective view—Attempt at improvement by the 1853 Act inadequate—The Indian Councils Act of 1861—Provisions—The retrogressive aspect of the Act—Importance of the Act—The Government of India Act of 1865—The Act of 1873—The Royal Titles Act, 1876.

The Act of 1833, we have seen, had deprived the Government of Madras and Bombay of their powers of legislation; and the law-giving

A retrospective
Review.

power was centralised at Calcutta, and strengthened by the addition of a new member¹ whose duties were confined to mere legislation. But the legislative and executive machines were still one and the same. In addition there was a more serious defect. The Governor-General's Council belonged to the Bengal service, and their lack of knowledge of the conditions of other provinces was felt to

1. Law member who afterwards—became an ordinary member. The provision 5 of the Charter Act of 1853 vide page 56 of the book.

be a serious drawback whenever problems relating to Madras or Bombay, for example, had to be tackled. The Act of 1853, as we have noticed, sought to remedy these defects revealed in the working of the Act of 1833 by (1) decisively differentiating the legislative machinery from the executive by adding to it six additional members for legislative purpose and (2) introducing representative members from the sister Presidencies¹. This was the first recognition of the principle of representation in the legislative branch of the Indian Government.

Attempt at improvement by the 1853 Act inadequate.

Although all the six members added were European officials, yet a great step was taken: the first Legislative Council was established; the examination of Bills was performed by Select Committees instead of by a single member, and for the first time the legislative business of India was conducted in public; and what is more important, we find legislation treated for the first time as a special function of Government requiring special machinery and a special process.

But it was soon made clear that improvements

1. See provision 6 The Charter Act of 1853, p. 56 of the book.

made in 1853 did not suffice to meet the needs of the time. Madras and Bombay still complained of the preponderance of authority which Bengal exercised. The huge extent of territory needed an expansion of the Legislative Council in order to handle matters with adequate knowledge and experience. Above all, the terrible events of the Mutiny brought home to men's minds the dangers of entirely excluding Indians from association with the legislation for their country. In a minute submitted by him Sir Bartle Frere wrote :—

“ The addition of the Indian element has, I think, become necessary owing to our diminished opportunities of learning through indirect channels what the Indians think of our measures and how the Indian community will be affected by them...
..... It is a great evil of the present system that Government can rarely learn how its measures will be received and how they are likely to affect its subjects, till criticism takes the form of settled and often bitter opposition.”

The Indian Councils Act of 1861¹ sought to meet the demand indicated above by making an advance in the frame work of the internal constitution of India.

The Indian Councils
Act of 1861.

1. 24 and 5 Vict.C. 67.

Firstly, the Act restored to the Governments of Madras and Bombay the Provisions. powers of legislation which

the Act of 1833 had withdrawn,¹ but with one important distinction. Formerly, the laws enacted by local legislatures had been complete in themselves and came into operation of their own force. Thenceforth the previous sanction of the Governor-General was made requisite for legislation by the local councils in certain cases, and Acts of the local councils required the subsequent assent of the Governor-General in addition to that of the Governor.²

To this extent legislative decentralisation was arrested by giving the Governor-General direct and personal control over the exercise of all legislative authority in India.

Secondly, For purposes of legislation the Governor-General's Council was re-inforced by additional members, not less than six, not more than twelve in number, nominated for two years, of whom not less than half were to be non-officials (Indians or Europeans).³

1. See provision 4 The Charter Act of 1833 in page 52 of the book.

2. Sections 28, 39 and 40 The Indian Councils Act, 1861.

3. Sections 10 and 11 Ibid.

Thirdly. The Governor-General's Executive Council was increased to five members and three of them must be persons who, at the time of their appointment, had been for at least ten years in the service of the Crown or of the Company and the Crown in India, and one must be a barrister of England or Ireland or a member of the Faculty of Advocates of Scotland, of not less than five years' standing.¹

Fourthly. The legislative power of the Governor-General in Council was extended over all persons whether British or Indian, foreigners or others, within the Indian territories, and over all British subjects within the dominions of Princes and States in alliance with Her Majesty.²

Fifthly. Another group of clauses gave legal force to all the miscellaneous rules and orders which had been issued in the newly acquired territories of the Company (known as the non-regulation provinces) either by extending or adapting to them regulations which been made for older provinces, or frankly by the executive authority of the Governor-General in Council. (A few

1. Section 3 The Indian Councils Act of 1861.

2. Section 22 Ibid.

years later the power of legislating for disturbed or backward tracts by regulations made in executive council was restored to the Governor-General by the Act of 1870.¹) A section of the same Act gave power to the Governor-General *without his Council* to make, in cases of emergency, temporary ordinances which were not to remain in force five for more than six months.²

Sixthly. The Legislative Councils were restored in Madras and Bombay by expanding the Governor's Executive Councils on the same lines as the Governor-General's. The Governor-General was also directed to establish a Legislative Council for Bengal and empowered to establish similar councils for the North-Western Provinces and for the Punjab; these two bodies were established in 1886 and 1897 respectively. But it should be noted that there was no attempt to demarcate the jurisdictions of the central and local legislatures as in a federal constitution.³ The Governor-General's Council could legislate for the whole of

1. The Indian Councils Act, 1870. (33 vict., ch. 3).

2. Sections 23 and 25 The Indian Councils Act of 1861.

3. In a federal constitution such as in the U. S. A. there is a demarcation of subjects for legislation by the supreme and local legislatures respectively.

India; and the Provincial Council for the whole of the province, with the reservation that before doing so in respect of certain matters the Governor-General's sanction had to be obtained.¹

In one respect, however, the Act was a retrograde movement. The Legislative Council, brought into being by the Act of 1853, began to behave, contrary to the intention of its authors, like a Miniature Parliament and "showed an inconvenient degree of independence by asking questions concerning, and discussing the propriety of, measures of the executive government".² Sir Charles Wood quoting the Chief Justice of Calcutta said that the council (*i.e.*, the Legislative Council established in 1853) "has no jurisdiction in the nature of that of a grand inquest of the nation. Its functions are purely legislative, and are limited even in that respect. It is not an Anglo-Indian House of Commons for the redress of grievances, to refuse supplies and so forth." So the framers of the Act of 1861, forewarned of the dangers assailing the autocratic powers of

1. Sections 37, 39, 40, 44 and 46 The Indian Councils Act, 1861.

2. Horne—The Political system of India p. 55.

the executive government, laid down provisions which rebuked the precocity of the council established under the Act of 1853 and strictly limited the function of the new councils to legislation. They were expressly forbidden to transact any business except the consideration and enactment of legislative measures or to entertain any motion except a motion for leave to introduce a Bill or having reference to a Bill actually introduced.¹

The Act of 1861 thus closes a chapter.

Importance of the
Act.

Its main interest has lay in the gradual construction and consolidation of the mechanical framework of Government. The three separate Presidencies have come into a common system; much of the intervening spaces has been brought under British rule; the legislative and administrative authority of Governor-General in Council has been asserted over all the provinces and extended to all the inhabitants; and the principle of recognizing local needs and welcoming local knowledge has been admitted, so that local Councils have been recreated and a few non-official and even Indian members have been introduced for the purpose of

1. Section 19 The Indian Councils Act, 1861.

advice. But, partly at least out of anxiety to prevent the authority of the executive from being impaired (as in Warren Hastings' days) by any other rival institution without administrative responsibility, it has been expressly declared that the councils are a mere legislative committee of the Government and are not the germ of responsible institutions.¹

The Government of India Act of 1865 extended the legislative powers of the Governor-General's Council to all British subjects in Native States, whether servants of the Crown or not; the Indian Councils Act of 1869 still further extended these powers by enabling the Governor-General's Council to make laws for all native Indian subjects of the Crown in any part of the world, whether in India or not. Incidentally it may be added that the Act of 1865 also enabled the Governor-General in Council to define and alter, by proclamations, the territorial limits of the various Presidencies and Lieutenant-Governorships.

The Act of 1873. An Act of 1873 (36 Vict. c. 17) formally dissolved the East India Company from January 1, 1874.

1. Report on Indian Constitutional Reforms, 1918.

1874

In the following year another Indian Councils Act enabled a sixth member of the Governor-General's Council to be appointed for Public Works purposes. The Indian Councils Act 1904, however, removed the necessity for appointing the sixth member specially for Public Works purposes, though it contained the power to appoint a sixth member.¹

An important and interesting event must be mentioned before we pass on to the next stage of our history. The Royal Titles Act, 1876. (27th April 1876)² having formally recognized the transfer of the Government of India from the Company to the Crown empowered the Queen to "make an addition to the Royal Style and Titles appertaining to the Imperial Crown and its Dependencies" and the next day the Queen, by Proclamation, assumed the title of "Empress of India."³

1. Indian Constitutional Documents pp. XXVII—XXVIII.

2. 39 Vict. ch. 10.

3. Queen Victoria's Proclamation, 1876 para 1.

CHAPTER VII

Growth of the Indian Legislature (*continued*) 1892—1909

The defects of the 1861 Act—Suggestion of Lord Dufferin for improvement—The Act of 1892 passed. Provisions of the Act—The enlargement of the Legislative Councils—And of their functions—Reasons for further advance—Salient features of the 1909 Reforms:—(1) The Supreme Legislative Council enlarged—(2) Legal recognition of the elective principle—(3) Official majority in the Provincial Councils abandoned—(4) Right to move resolutions etc.

The next landmark in the growth of the Indian Constitution was the passage of the Indian Councils Act of 1892. In order to understand the full significance of the advance made by the Act of 1892 it is necessary to recapitulate briefly the changes introduced by the Councils Act of 1861, so that we may be better able to see

The defects of the
1861 Act.

the defects revealed in the working of that Act and the remedies that were felt to be necessary by the framers of the new Act. The Act of 1861, as we have seen, constituted three Legislative

Councils in our country—the Supreme Council of the Viceroy and Provincial Councils of Madras and Bombay. The Supreme Council of the Viceroy, or more definitely, the Supreme Legislative Council, consisted of the Governor-General, his Executive Council of five ordinary members and an additional Council of a *minimum* of six and a *maximum* of 12 members, nominated by the Governor-General. The Legislative Councils of Madras and Bombay were also recruited by a minimum of four and a maximum of eight additional members. Of the nominated members, whether of the Supreme or Provincial Councils, half at least, must be non-official. In pursuance of the power given in the Act of 1861 Legislative Councils had also been called into existence in Bengal and in the North-Western Provinces. In Bengal the Council consisted of the Lieutenant-Governor and 12 nominated Councillors, and in the North-Western Provinces the Council consisted of the Lieutenant-Governor and nine nominated Councillors. In both cases one third of the nominated members must be non-official. This system had undoubtedly worked well. It had justified itself and the anticipations of its promoters. Operating to a large extent through the agency of sub-committees, composed

of experts, it had proved to be an efficient instrument for the evolution of law. The publicity which had attended its proceedings had a good effect and a number of our public men of education and capacity had the opportunity to lend their services, and, to quote Lord Curzon, "the standard of merit in the Councils had undoubtedly been high."

At the same time these Councils had been subject to restrictions and limitations which were imposed upon them. In the first place they were in no sense term Parliamentary bodies. They were deliberative bodies with a comparatively narrow scope, in as much as they were assembled for the discussion of the immediate legislation which lay before them and were not permitted to travel outside that very circumscribed area. Under these circumstances it was felt that the Government lacked an opportunity for explaining its policy and for replying to hostile criticism or attack; and at the same time there was no opportunity for the non-official element to ask for information, or to state their grievances, or to become acquainted with the policy of the Government. These feelings had been expressed in many memorials that had been addressed, over a

large number of years, to the Government of India by important public bodies and associations throughout the country, the Indian National Congress, which had held its first session in 1885 at Bombay, playing the most conspicuous part.

Suggestion of Lord Dufferin. Lord Dufferin, in February 1887, the occasion being the

celebration of the Queen's Jubilee, spoke of the desirability of reconstituting the Legislative Councils of the Viceroy and of the subordinate Governments on a broader basis and of enlarging their functions ; and in November of the following year he sent home a despatch in which he recommended in the first place, an annual budget discussion in the Supreme Legislative Council. Lord Dufferin in that despatch said that he did not mean that votes should be taken in regard to the various items of the Budget, or that the heads of expenditure should be submitted in detail to the Council, but simply that the opportunity should be given for a full, free and thorough criticism and examination of the financial policy of the Government. In the same despatch Lord Dufferin suggested that questions should be asked to the Supreme Legislative Council on matters dealing with Indian as opposed to Imperial interest.

In 1888 Lord Dufferin left India, and early in the following year he was succeeded by Lord Landsdowne who gave his complete approval to the suggestions of his predecessor.¹

Accordingly, a Bill, was introduced in the House of Lords in 1890 with the object of making a further advance on the Indian Councils Act of 1861, and after the three years of vicissitude it was finally passed into an Act, under the title of 'The Indian Councils Act of 1892.'² The Act provided as the followings:—

1. The number of members of the Supreme Legislative Council nominated by Governor-General shall be such as from time to time may seem to him expedient, but shall not be less than *ten* nor more than *sixteen* of which not more than six were to be official.³

Provisions of the Government of India Act, 1892.

2. The number of members of the Legislative Councils of Madras and Bombay respectively shall (besides the Advocate General of the

The enlargement of the Legislative Councils.

1. Lord Curzon's (then Under Secretary of State for India) speech, 1892.

2. 55 and 56 Vict. C. 14.

3. Cl. 1 Sub. Sec. (1) The India Councils Act of 1892.

Presidency) be such as may seem from time to time expedient to the Governors but shall not be less than *eight* nor more than *twenty*¹ of which not more than *nine* were to be official.

3. The *maximum* number of members of the Bengal Legislative Council was fixed at *twenty* and that of N. W. P. at *15*².

4. Any person resident in India may be nominated as a Legislative member of Council.³

5. The Governor-General in Council may from time to time, with the approval of the Secretary of State in Council, make regulations as to the conditions under which the members should be nominated so as to represent different classes of interests.⁴

The Governor-General utilised the powers given by this important provision (cl. 1 sub-sec. (4) of the Act) to appoint the maximum number of 10 *non-official members*, as follows :

Five, were directly appointed by the Governor-General to represent different classes and interests;

1. Clause 1, Sub-section (1) The Indian Councils Act, 1892.

2. Cl. 1, Sub-sec. (2) Indian Councils Act, 1892.

3. Cl. 1, Sub-sec. (3) Ibid.

4. Cl. 1, Sub-sec. (4) Ibid.

four were appointed to represent the provinces¹ one being 'elected' by the non-official members of each of the four Provincial Legislative Councils.

One was appointed to represent the Calcutta Chamber of Commerce which 'elected' him?

The Provincial Legislature of Madras and Bombay were also enlarged by *twenty* members each, the maximum provided by the Act. Of these *eleven* were non-officials and were nominated by Municipalities, University Senates and various trading associations. Thus not only were the Legislative Councils instituted on a 'broader basis' and the non-official element in them increased; but a round about 'elective system' was also introduced.

6. The Act further enlarged the functions of the Councils, which were empowered to discuss the annual budget, and discuss and criticise the Government's financial policy, as well as to put questions to the executive officers in regard to their administrative acts.²

These reforms did not satisfy the demands of the Congress, for on all questions in which there

1. Madras, Bombay, Bengal and N. W. P.

2. Clause 2, Indian Councils Act, 1892.

might be a difference of opinion the Government could be sure of a majority in its favour, solidly arrayed against the opposition. The six *directly* nominated non-official members could always be depended on to vote with the Government. Yet, despite this defect, these reforms constituted a decided advance in the direction of self-government, for non-official Indians were now permitted to sit on the Council Board with the Viceroy and the Executive Ministers. Further, they could offer, in the financial policy which they put forward, advice and criticism of the administrative work of the Government.

The working of the reforms of 1892 naturally and logically led to a further stage of advance. Fourteen years' experience of the reforms had shown favourable results. Criticism had been helpful. Useful information and valuable suggestions had been received by Government; and the association of the leaders of non-official opinion in the management of affairs, even though in a restricted and rudimentary form provided for by the Act of 1892, had afforded an outlet for the legitimate aspiration of qualified Indians. Non-official speakers in the Council as well as speakers

Reasons for further
advance.

and organs of the Indian National Congress were claiming that the time had come for further advance. Internally indeed the period was one of marked unrest, to which the Russo-Japanese war of 1904-05, the Universities Act of 1904, and the partition of Bengal contributed. In November 1905, Lord Minto had replaced Lord Curzon as Viceroy and in December Lord Morley became Secretary of State for India. In these circumstances Lord Minto made up his mind to introduce reforms on a wider basis as a palliative for the unrest and the repressive measures he had introduced. In a minute of August, 1906 the noble Lord wrote :—

“We, the Government of India, cannot shut our eyes to present conditions. The political atmosphere is full of change. Questions are before us which we cannot afford to ignore and which we must attempt to answer and to me it would appear all important that the initiative should emanate from us, that the Government of India should not be put in the position of appearing to have its hands forced by agitation in this country or by pressure from Home—that we should be the first to recognize surrounding condition and to place before His Majesty’s Government the opinions

which personal experience and a close touch with the every-day life of India entitle us to hold."¹

The proposals of reform contained in the masterly minute of Lord Minto were agreed to, with minor changes here and there, by Lord Morley, the then Secretary of State for India; and the Indian Councils Act, embodying those epoch-making reforms associated with the name of their joint authors, Viscount Morley and the Earl of Minto, received the Royal assent on May 25, 1909.

First of all, the Legislative Councils were re-constructed on a broader basis

Salient features of the
1909 reforms: (1) The
Supreme Legislative
Council enlarged.

so as to admit more representative non-official opinion.

Under the regulations (Supplementary to the Act) of November 1909, as revised 1912, the Supreme Legislative Council was constituted as follows:

37 Officials

{ The Governor-Generals.
7 Members, of the Executive Council.
28 Additional members being nominated officials, of whom nine were nominated each representing one of the nine local governments;

1. Report on Indian Constitutional Reforms, 1918.

37 Officials	{	(also the Chief Commissioner of the province of Delhi or the Lieutenant-Governor of the Punjab, <i>ex-officio</i> . ¹)
		5 Additional members, being nominated non-officials.
32 Non-Officials	{	27 Additional members, being elected non-officials.

The total number of members was 69.²

Secondly, the elective principle, which had been tentatively acted upon in a restricted and round about way from 1872, was for the first time *legally* admitted by the Act of 1909.³ The number of elected non-officials was increased to 27 members and these members were to be elected as follows:—

(a) 8 members were to be elected by the additional members of the four major provinces of

1. The Commander-in-Chief as extraordinary member.

2. The above figures have been taken from Horne's book, "The Political System of British India," p. 57, as being most up-to-date and excellently arranged.

3. Up to 1909 there was no obligation on the part of the Governor-General to accept the nomination made by the 'elective' bodies; but from now the 'election' was obligatory on him.

Madras, Bombay, Bengal and the U. P., each electing 2 members.

(b) 5 members were to be elected by the non-official members of each of the five provinces of the Punjab, Burma, Bihar and Orissa, Assam and the C. P.

(c) The larger land-holders of the provinces of Madras, Bombay, Bengal, the U. P., Behar and Orissa and the C. P. were to elect 6 members; one member each.

(d) 6 members were to be elected by the Muhammadans in six provinces.

(e) 2 members were to be elected by the European Chambers of Commerce of Bombay and Calcutta; one member each.

Thirdly, the Provincial Legislative Councils were reconstructed on a wider

(3) Abandonment of the official majority in the Provincial Councils.

basis, with the introduction of a larger non-official element.

The size of these Councils varied, from a total membership ranging from 45 to 54 in the larger, to one ranging from 26 to 27 in the smaller or less advanced provinces. In the Indian (Supreme) Legislative Council, in order to secure a safe passage for essential Government

measures provision was made for an official majority. Lord Morley laid it down that the Governor-General's Council in its legislative, as well as its executive character, should continue to be so constituted as to ensure its constant and uninterrupted power to fulfil the constitutional obligations that it owes, and must always owe to the Imperial Parliament. In the Provincial Legislative councils, on the other hand, it was not thought necessary to retain this safe-guard. In all the provinces (except Burma)¹ the non-official members, including both nominated and elected members, were in a small majority; while in Bengal the elected members *alone* were in a majority. In point of fact, however the official *block* was strong enough to dominate the voting power in all the Councils.

The composition of the Bengal Legislative Council, which may be used to illustrate the composition of the Provincial Councils generally, was as follows :

20-22 officials	{	The Governor.
		3 members of the executive council
		16—18 additional members, being
		nominated officials

1. The total number of members in the Burma Legislative Council (first created in 1897) was 18; and there were no elected members.

32-34 non-officials

- 4—6 additional members, being nominated non-officials.
- 28 additional members, being non-officials elected as follows :
 - 13 by the non-official members of certain local authorities, (such as the municipalities and district boards).
 - 5 by the larger land-holders of the province.
 - 5 by Mohammedans of some standing in the province.
 - 4 by trade and commercial associations.
 - 1 by Calcutta University.

Total number of members 54,¹ 20 to 22 officials against 32 to 34 non-officials.

Fourthly, no less important than these changes in the composition of the councils were the changes in their functions. The Act of

(4) Right to move resolutions etc.

1892 gave members power to discuss the budget but not to move resolutions concerning it or to ask for a division. It became the practice accordingly to allot annually one or two days a year to

1. Horne p. 58.

the discussion of a budget already settled by the executive government. Lord Morley's Act empowered the councils to discuss the budget at length before it was finally settled, to propose resolutions regarding it, and to ask for a division of votes on it. Henceforth resolutions might be proposed and divisions taken not only on the budget but on all questions of public importance. The resolutions were to be expressed and to operate as recommendations to the executive government. On certain questions, such as those relating to Stamps, Customs, Assessed Taxes, Tributes from Native States, Courts and Army, Marine and Military Works, no resolutions or discussion were allowed. Any resolution might be disallowed by the head of the Government acting as President of the Council without giving any reason other than that in his opinion the resolution was against public interest. At the same time the right to ask questions of the Government was enlarged by allowing the member who asked the question to put a supplementary one.

Shortly after the coming into operation of the reforms under the new Act Lord Morley appointed an Indian, Mr. Sinha (now Lord Sinha), Law Member of the Viceroy's executive council; and

since that time there has always been *one* Indian member, until the Government of India Act of 1919 increased the Indian members to *three*. The Indian Councils Act of 1909 gave power to raise the number of members of the Governor's executive councils in Madras and Bombay to *four* as a maximum, and since then an Indian has always been appointed. The same Act gave power to create an executive council for Bengal which was constituted next year.

CHAPTER VIII

Birth of The Indian Constitution: The Montagu-Chelmsford Reforms.¹

The inadequacy of the 1909 Reforms—Reasons for further advance—The great war—The Declaration of August 20, 1917—The Government of India Act, 1919, passed.

The birth of the real Indian Constitution, which gives us a bit of responsible government, at least in the provinces, dates from the passage of the Government of India Act in 1919 in which were embodied the Montague-Chelmsford Reforms. These

reforms were named after their joint authors—Mr. Montagu, the Secretary of State for India and Lord Chelmsford, the Viceroy of that time. We must briefly state the conditions which made these epoch-making reforms inevitable. We cannot do better than begin with the words of the Report: "The reforms of 1909 afforded no answer and could afford no answer to Indian political problems. Narrow franchises and indirect elec-

1. The Government of India Act, 1919 (9 and 10 Geo. 5 C—101).

tions failed to encourage in members a sense of responsibility to the people generally, and made it impossible, except in special constituencies, for these who had votes to use them with perception and effect. Moreover, the responsibility for administration remained undivided : with the result that while Government found themselves far more exposed to questions and criticism than hitherto, questions and criticisms were naturally uninformed by a real sense of responsibility, such as comes from the prospect of having to assume office in turn. The conception of a responsible executive, wholly or partially amenable to the elected councils, was not admitted. Power remained with the Government, and Councils were left with no functions but criticism. It followed that there was no reason to loose the bonds of official authority, which subjected local governments to the Government of India and the latter to the Secretary of State and Parliament. Such a situation, even if it had not been aggravated by external causes, might easily give rise to difficulties : the plan afforded no room for further advancement along the same lines.¹ For the executive was irremovable, and to

1. The Joint Report, para 81, page 52.

make such an executive entirely amenable to the elected councils was to invite deadlock and disruption. Parliamentary usages were *initiated* and adopted in the councils without giving them *responsibility* which is the basis and real test of representative and constitutional government. The Morley-Minto reforms, therefore, spent their utility in nine years. They were no longer acceptable to Indian opinion and in the light of experience official opinion also viewed with them a critical eye.

In addition to the inherent defects as revealed in the working of the 1909
 The Great War. Act, the conditions arising out of the Great War gave an impetus for further reforms. The deep and splendid loyalty¹ with which the princes and people of India fought for Great Britain in the war was deeply appreciated and gratefully acknowledged by her. Constitutional changes of a far-reaching nature were in contemplation. As an earnest of reform a place was allotted to India at the Imperial War Conference held in 1917. Sir S. P. Sinha and the Late Maharaja of Bikaner together with Sir James Meston represented

1. Roberts—History of British India.

our country¹ in the said Conference in London in the spring of 1917 and afterwards in the Peace Conference held in Versailles. On August 20, of the same year, Mr. E. S.

The Declaration of
August 20, 1917.

Montague, the Secretary of State for India, made the most-momentous announcement in which he declared "the policy of His Majesty's Government, with which the Government of India are in complete accord, is that of an increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realisation of responsible Government in India as an integral part of the British Empire."

The pledge underlying this epoch-making and utterance was outlined in the clearest terms in the Reform Proposals thus:—

"Our conception of the eventual future of India is a sisterhood of states, self-governing in all matters of purely local or provincial interest, in some cases corresponding to existing provinces, in other perhaps modified in area according to the

1. Both Sinha and Meston have since been created Peers.

character and economic interests of their people. Over this congeries of states would preside a central government, increasingly representative of and responsible to the people of all of them, dealing with matters, both internal and external, of common interest to the whole of India; acting as arbiter in inter-state relations, and representing the interests of all India on equal terms with the self-governing units of the British empire."¹

Thus we find that the aim of the British Government as announced in the August declaration was the progressive realisation of responsible government in India and the measure to be adopted to achieve this aim was the gradual development of self-governing institutions culminating in provincial autonomy at the first stage of development. We shall see that the most direct and prominent features of the reforms which are the outcome of the proposals of the Joint Report, as embodied in the **Government of India Act of 1919**, are a freeing of self-governing institutions, such as corporations, municipalities and district boards from official control, and the giving of res-

1. Joint Report.

possible government, in some measure at least, to the provinces.

And it will be easier to understand the significance of the **Act** if we make clear the changes brought about in the constitution, under different heads—and each head dealt in detail in a separate chapter.

CHAPTER IX

The Montagu-Chelmsford Reforms.¹

(i) Provincial Government.

Finance—Provincial subjects of administration—Transferred subjects—Reserved subjects—Diarchy—Certification and 'veto'—Position of ministers—The Legislative Council—Electoralates—Voters' qualifications—Powers of Provincial Councils.

PROVINCIAL GOVERNMENTS.

It is in the provinces that the first substantial steps have been taken in accordance with the Act, towards the development of a system of responsible government. The subjects to be administered by the Provincial Governments and the Central Government respectively are clearly and definitely separated by the statute, the provinces having been given a degree of independence with which the Central Government can rarely interfere.

First of all, with regard to finances. The
Sources of the revenue of
Finance. India are divided between the

1. The Government of India Act, 1919 (9 and 10 Geo. 5, C—101.)

buildings, light railways etc., (7) Development of industries, including provisions for research and technical education (8) Agriculture (9) The Civil Veterinary Department, the Fishries, and Co-operative Societies (10) Land laws and land revenue administration branches (11) Famine relief. (12) Irrigation (13) Forests, (14) Law (15) Justice (16) Police and Prisons (16) Labour.

Of these the first nine subjects are transferred to the control of ministers who are to be appointed by the Governor from among the members of the Legislative Council to which they are responsible for their acts. Thus representative or responsible government has been introduced in the provinces in so far as the transferred subjects are concerned.

The last seven subjects enumerated above are reserved¹ to the Governor-in-Council, acting with his ministers, and the Legislative Council has practically no control over the administration of these subjects except that it has the privilege of offering criticism and advice. The Governor is responsible for the administration of those subjects to Parliament and to Parliament alone.

Reserved subjects.

1. Forest is a transferred subject in Bombay alone.

Thus a sort of a diarchy or dual control has been introduced in the provinces—
 Diarchy the transferred half of the Government being under popular control through our representative Councils, the reserved half remaining as before under the control of irresponsible and bureaucratic officials who may not be removed by the Council.

The manner by which the Governor exercises his autocratic powers is by means of 'certification' and 'veto'. I shall explain these terms by means of an actual illustration. Suppose the Legislative Council withholds supplies i.e., does not pass an executive demand for money, until a certain grievance with regard to a reserved subject is redressed or corrected. If the demand for money pertains to a reserved subject and is refused by the Legislature, the Governor has power to 'certify' the demand as passed in spite of the Legislature's refusal. This certification may extend to the entire demand in the budget and to all Bills relating to reserved subjects¹. Again in case the Legislative

1. cl. 13 The Government of India Act, 1919.

Council happens to pass any legislation touching any reserved subject and the said legislation is not liked by his Government, the Governor by exercising the power vested in section 11 (4) of the Refrorms Act may veto the Bill i.e., "direct that no further proceedings shall be taken by the council in relation to the Bill". Although there is nothing in the Act to prohibit the Governor from exercising his 'veto' power over all kind of Bills, which, in the opinion of the Governor, are likely "to affect the safety and tranquility of his province", the occasions for the exercise of such power in regard to the transferred subjects have been rare or perhaps have not arisen at all.

Section 4 of the Act defines the constitutional position of the ministers as follows:

(1) 'The Governor of a province may appoint ministers, not being members of his executive council or other officials, to administer transferred subjects. Any minister so appointed shall hold office during his pleasure.

(2) 'No minister shall hold office for a longer period than six months, unless he is or becomes a member of the local legislature.

(3) 'In relation to transferred subjects, the Governor shall be guided by the advice of his ministers unless he sees sufficient cause to dissent from their opinion, in which case he may require action to be taken otherwise than in accordance with that advice.'¹

It is thus seen that the Governor has not been constitutionally bound by the Act to follow the advice of his ministers and has the power to overrule them even with regard to transferred subjects. But as the working of the Act has shown he has rarely done so. The Governor faces a further difficulty should he act contrary to the advice of his ministers, for the ministers have the right to resign, and if they happen to be leaders of the local legislature, it may be difficult for the Governor to find ministers to take their place, who will secure the necessary majority in the House for carrying on the administration smoothly. As a matter of fact, the transferred departments are intended to be regulated on the principle of representative and responsible government along English Parliamentary lines, and this forms the most substantial advance made by the Act in the path of constitutional government.

1. Section 4 sub-clauses (1) (2) (3) Government of India Act, 1919 (9 and 10. Geo. C. 101.)

The Act has widened the Provincial Legislative Council into a body of sufficient size and with a sufficiently large elected majority, fixed at 70 p. c. as a minimum, to represent adequately public opinion in the province, and to create an electorate. The first franchise rules have given the vote to about 5,000,000 of the adult male population. It was left to the option of any province to extend the franchise to women. Below is given a table to indicate the strength and composition of the Provincial Councils:—

Province.	Elected.	NOMINATED AND EX-OFFICIO.		Total.
		Officials.	Non-officials.	
Madras	98	23	6	127
Bombay	86	20	5	111
Bengal	113	20	6	139
United Provinces ..	110	18	5	123
Punjab	77	16	6	93
Bihar and Orissa ..	76	18	9	103
Central Provinces ..	<u>53</u>	<u>10</u>	<u>5</u>	68
Assam	39	9	6	53
Burma	78	15	8	101

The figures in this table are the maximum figures in every case, and where less than the maximum number of officials is nominated to any council, the number of nominated non-officials must be increased in proportion; e.g., if there are only 16 officials (nominated and *ex-officio*) on the United Provinces Council, there must be seven nominated non-officials. The official members of the Executive Council are *ex-officio* members of the Legislative Council. There are four such members in each of the three provinces of Madras, Bombay and Bengal; three in Behar and Orissa, and two in each of the remaining provinces.

An electorate is a body of voters resident in a particular district or territory
 Electorates. specified under the Act or representing a particular interest such as Commerce or a University. It is called a constituency. A constituency is divided into 'rural' (i.e., a group of electors residing in villages) or 'urban' (i.e., voters living in a municipal town). The electorates in each province have been so arranged as to give separate representation to the various communities and interests into which our country is divided. Although there are minor variations from province to province, a table showing their

character in one province (Bengal) will give a sufficiently clear idea of their general position :

Class of Electorate.			No. of Elec- torates of this Class.	No. of members returnable by Electorates of this Class.
Non-Muhammadian ..	..	42	46
Muhammadian ..	..	34	39
European ..	..	3	5
Anglo-Indian ..	..	1	2
Land holders ..	..	5	5
University ..	..	1	1
Commerce and Industry ..	..	8	15
TOTAL ..	..	94	113

Of the 94 constituencies in Bengal, all but nine (those representing the University and Commerce and Industry) are arranged on a territorial basis. The normal area for a "Muhammadian" or "Non-Muhammadian" constituency is a district (or where the districts are large and populous, it is half a district) in the case of rural constituencies, and, in the case of urban constituencies, a group of adjacent municipal towns. Some large towns form urban constituencies by themselves, and the city

of Calcutta provides eight separate constituencies, six "Non-Muhammadan" and two "Muhammadan."

The qualifications for voters, which are the same as those of a candidate, vary in slight degree and in detail from province to province. The Franchise is generally based on a property qualification i.e., all male adults, unless otherwise debarred by law, who have the minimum property qualifications prescribed by law have votes.

The qualifications are these: if the elector is an urban elector he must reside in his constituency for at least 12 months before the date of election and must pay either municipal taxes amounting to at least three rupees or occupy or own a house of the annual rental value of at least 36 rupees¹ or pay an income-tax. If he is a voter in a rural constituency he must hold agricultural land of the annual value of at least 10 rupees.

There are certain specially privileged persons who have a right to vote in the local legislatures, even if they have not the requisite property quali-

1. The rental values are much higher in Calcutta, Madras and Bombay.

fications enumerated above. These men are: retired and pensioned officers and men of all ranks of the Indian army; and lambardars and village headman in the Central Provinces and the Punjab. A table showing the total number of voters registered in each province on the rolls prepared for the elections of 1920 will indicate the strength of the electorates in the different provinces :

Madras ..	1,258,156	Behar and Orissa ..	327,564
Bombay..	548,419	Central Provinces ..	144,737
Bengal ..	1,021,418	Assam ..	203,191
U. P. ..	1,347,278	Burma ..	1,766,386 ¹
Punjab ..	505,361 ¹		

The Powers of the local legislatures have been considerably increased under the Act of 1919.

Powers of Provincial
Legislative Councils.

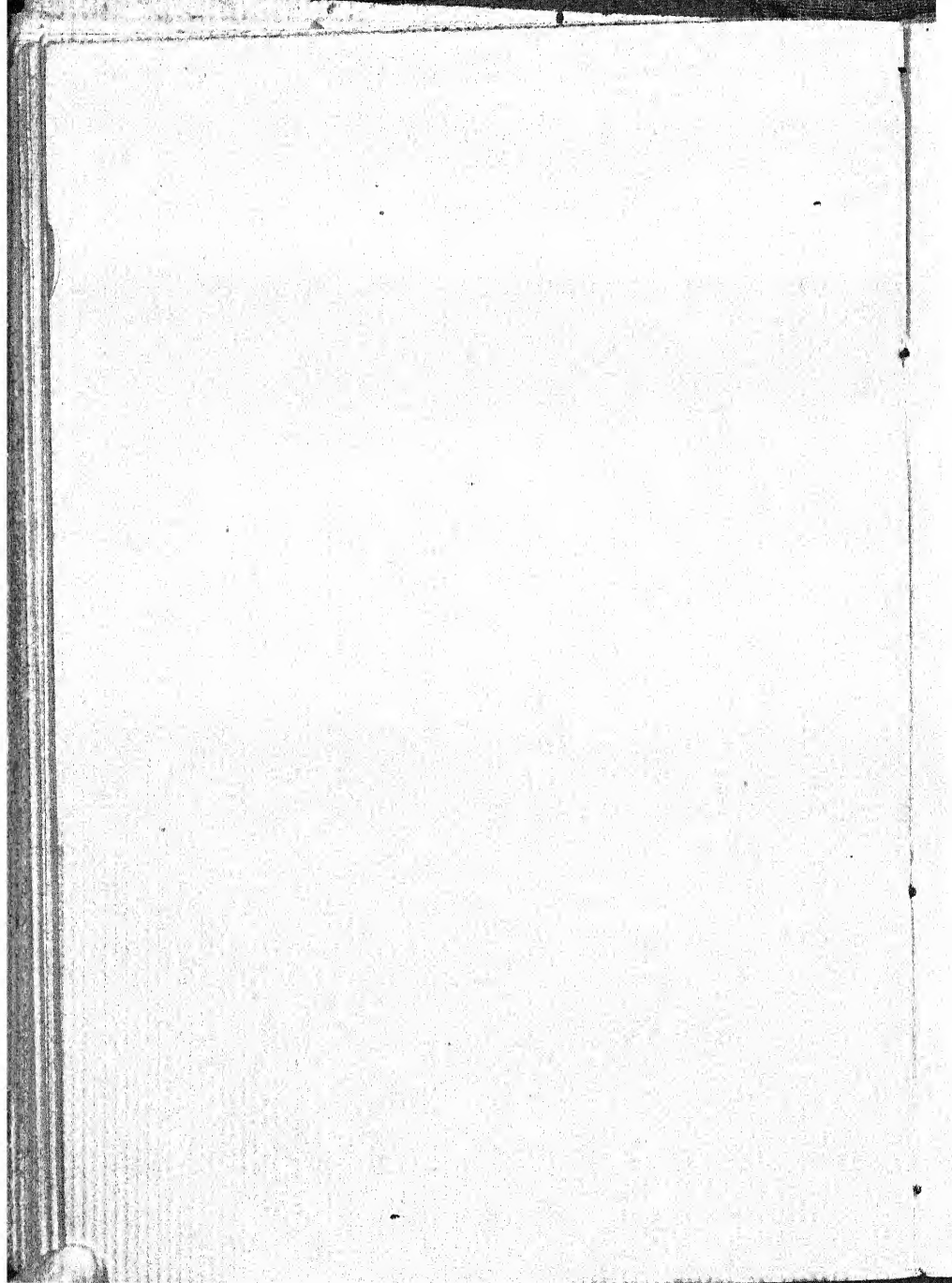
(1) They have now full control over the provincial finances with regard to transferred departments; they have the power to vote or withhold supplies even for the reserved departments subject to the Governor's certification.

(2) They have the power to initiate legislation.

(3) They can ask any number of questions and supplementary questions.

(4) They have the power to frame their own rules of procedure in matters of detail, subject to the Governor's concurrence.

(5) Power was also given them by the Act to *elect* their own Presidents after the present councils have functioned for four years. Now all the local legislatures have their own elected Presidents.



CHAPTER X

The Montagu-Chelmsford Reforms¹

(ii) The Central Government

*No change in its character—Its constitution and functions—
Departments—Sources of revenue—The Indian Legislature—
How elected—Franchise—Powers of the Legislative Assembly.*

Apart from considerable changes in the structure, there has been no real change in the character, of the Central Government under the Act of 1919. No element of 'responsibility' has been introduced here as in the Provinces. The Government remains autocratic and irresponsible as before. Yet the changes made in the framework of the Constitution are important and have paved the way for introducing 'responsibility' in the near future. I shall state these changes under several heads:

THE EXECUTIVE COUNCIL

The statutory bar to the appointment of more than six members of the Governor-General's Executive Council has been removed by

Its constitution and functions.

1. The Government of India Act, 1919 (9 and 10 Geo. 5 C—101).

the Act. The number, including the Governor-General, has been fixed at eight or more, of which at least three must be Indians. The Governor-General is bound to act according to the decision of the majority in his Council. He has the power, however, under the Act to overrule his Council in matters which in his opinion affect the "safety, tranquility or interests of British India". But objecting members are authorised to note the reasons for their disagreement and these have to be forwarded to the Secretary of State. Each member of the Council is in charge of a department.

DEPARTMENTS

The whole administration is divided into eight departments.

1. The *Foreign Department*, dealing with the Native States and the neighbouring countries of Afghanistan, Persia, Arabia, Tibet, China and Siam, is directly managed by the Viceroy. The provinces of Ajmer-Merwara, Beluchistan and N. W. F. Province are also in charge of the Viceroy.

2. The *Home Department* supervises the administration of the provinces with regard to

- law, justice, police, Jails etc., is in charge of the Home member.

3. The department which deals with the making of laws *i. e.*, drafting Bills for, and giving legal advice to, the Government, is called the *Legislative Department* and the member in charge is called the Law member.

4. The *Finance Department* dealing with the annual budgets of the Central Government is in charge of the Finance member.

5. The *Revenue and Agriculture Department* supervises the collection of land revenue, with agriculture and the Public Works etc., of the provinces.

6. The *Department of Commerce and Industry*, in charge of the Commerce member, works after Trade statistics, information concerning commerce, customs, Tariff, and Posts and Telegraphs.

7. The *Education Department* supervises provincial departments of education, sanitation and local self-government and is in charge of the Education member.

8. The *Army Department* is in charge of the Commander-in-Chief.

(The control of the Central Government over the administration of the Provincial Governments has been reduced to the minimum. Interference is very rare and especially so in transferred subjects.)

SOURCES OF REVENUE

The main sources of revenue of the Central Government are (1) Customs (2) Income-Tax (3) Railways (4) Posts and Telegraphs (5) Salt (6) Opium (7) Contributions from Provinces (8) Contributions from the Native States.

THE INDIAN LEGISLATURE.

The Supreme Legislature or the "Indian
Legislature", as it is called
by the Act, consists of two
Chambers. The upper Chamber, or 'Council of
State' contains 60 members of whom 34 are elected and 26 nominated. Of them not more than 20 may be officials. The Lower Chamber or "Legislative Assembly" consists of 144 members of whom 104 are elected and 40 nominated, and of them 26 are to be officials. The members of the Governor-General's Executive Council are not *ex-officio* members of either Chamber as before, but have to be specifically appointed as such.

A member of the Executive Council can, however, sit and speak in both Chambers, but can only vote in the Chamber in which he has been appointed. The President of the Council of State is a nominee of the Governor-General, as was the President of the Legislative Assembly for the first four years. After that period the Lower House has had its own elected President. The normal lifetime of the Council of State is five years and that of the Assembly three years, unless they are otherwise dissolved by the Governor-General.

“The method of election for both Chambers is direct, and although the number of electors is considerably smaller than for the Provincial Councils, it is a great advance over the very restricted and for the most part indirect franchise established under the Act of 1909 for the unicameral (one-chambered) Central Legislature which no longer exists. Generally speaking, the electoral scheme for the Lower Chamber is based on the model of the Provincial councils already described, except that *firstly* the property qualifications for voters (and consequently for candidates) is higher in order to obtain manageable constituencies, *secondly*, that the constituencies necessarily cover

How Elected.

a considerably larger area than constituencies of the Provincial Council. The distribution of seats in both Chambers, and the arrangement of constituencies, is on a provincial basis; that is, each province has been given the right to elect a number of representatives. The following table shows the number of elective seats in each province":—

			Legislative Assembly.	Council of State.
Madras	..	..	16	5
Bombay	..	..	16	6
Bengal	..	..	17	6
United Provinces		..	16	5
Punjab	..	..	12	4
Bihar and Orissa		..	12	3
Central Provinces		..	6	2
Assam	..	..	4	1
Burma	..	..	4	2
Delhi	..	..	1	..
			104	34 ¹

Electors voting in the elections for the Legislative Assembly must have a higher property qualification than do the voters in Provincial Council elections. For example, an elector in a

1. The Indian Year Book 1924.

municipal town has to pay the municipal taxes amounting to at least 12 rupees or occupy or own a house of the annual rental of Rs. 180.¹ In a rural constituency the voter must hold agricultural land of the annual value of at least 50 rupees. For the Council of State the property qualification of voters is still higher, as the object of the framers of the Constitution was to provide that the upper Chamber should be composed of men with a higher stake in the country and would then be conservative in character and opposed to rapid changes of any kind. A voter for the council of state, who resides in a municipal town, must pay an income tax on at least Rs. 10,000 and if he lives in a rural constituency must own land of the annual value of at least Rs. 1,500.

Like the Provincial Councils, the Indian Legislature discusses the annual budget, votes supplies, moves resolutions and passes them, and asks questions. But no 'responsibility' having been introduced in the Central Government, the Legislature has no control of the finances, as the Provincial Council

1. Compare voters' property qualification for the Provincial Councils in p. 103 of the book.

has on the transferred departments; for even if it withholds supplies *i.e.*, refuses to pass the budget, the Governor-General has the power of 'certifying' the budget as passed. This has happened many times in the short history of the working of the new Constitution.

The Central Legislature may pass a resolution by its non-official majority, but that Bill may be 'vetoed' by the Governor-General, if he thinks it necessary. The Governor-General has the right of addressing the Legislative Assembly and the Council of State and may for that purpose require the attendance of the members.

CHAPTER XI

The Montagu-Chelmsford Reforms¹

(iii) The India Office.

The Secretary of State for India—His powers—Relaxation of control—His salary—The India Council—Its constitution—President—The Secretary of State—Functions of the Council.

The Secretary of State for India in Council, known as the Home Government, is at the head of all Indian administration and has his office called the India Office in whitehall in London. As to the structure and character of the Home Government there has been little material change. The Secretary of State, as before, appoints high officials, issues orders to them, and asks to have papers on all subjects sent to him. All despatches

His Powers.

from India must be addressed to him and he must sign all despatches to India. For new legislation, for declarations of war and other matters, his permission is necessary. Viceroy is to pay due obedience to all such orders as he may receive from the

1. The Government of India Act. 1919 (9 and 10 Geo. 5. C—101.

Secretary of State who is all powerful in relation to the Government of India.¹

The Act, however, enjoins some relaxations of control on the part of the Secretary of State over the transferred subjects in the same way as the Central Government is expected to interfere less and less on the administration of the Provincial Governments. Also, the Secretary of State is ordinarily enjoined from interfering in matters where the Government of India and the Central Legislative body agree.²

Another change made under the Act of 1919 is the transfer of the salaries of the Secretary of State for India, his under secretaries, and the members of India Council from the Indian revenues out of which they had hitherto been paid, to the British Exchequer. This new devise has served a tow-fold purpose: (1) it has relieved the Indian treasury of

1. Vaswani.

2. Clause 33 of the Government of India Act, 1919, lays down "that the Secretary of State may reasonably consider that only in exceptional circumstances should he be called upon to intervene in matters of purely Indian interest where the Government and the Legislature of India are in agreement."

* a heavy burden; (2) and by placing the India Office budget on the British estimates it has afforded an opportunity for a real and earnest debate annually in the House of Commons on Indian administration.

THE INDIA COUNCIL.

Constitution. The constitution of the India Council also has undergone a slight change under the new Act. The number of members was formerly not less than 10 and not more than 14. The Act has now fixed the minimum at eight and maximum at 12 members, of whom three are generally Indians. Whereas the tenure of service of a member was formerly seven years, it is now five. Meetings are now held once a month instead of weekly as before. The salary of a member is £ 1,200 a year and the Indian members receive an additional oversea allowance of £ 600 a year.

President. The Secretary of State presides over the meetings of the Council and in his absence the Vice President appointed by him. The matters in which the Secretary of State is bound to consult, and abide by a majority vote of his Council are (1) expenditure

Function of the Council.

of Indian Revenues (2) changes in the salary, furlough and pension rules for India, (3) appointment of Indians to the I. C. S. and (4) making temporary appointments to the Viceroy's Council. In all other matters the Secretary of State may or may not consult his Council, and if he does, he is not bound to follow its decision.

THE HIGH COMMISSIONER FOR INDIA.

An important reform made by the Act and conferring a high status on India was the provision¹ made for the appointment of a High Commissioner for India who is to be the accredited agent in London of the Government of India, occupying a somewhat similar position to that of the representatives of the Dominion Governments. He is our chief official representative in London and his main work is in connection with the borrowing of money, the purchasing of stores and the making of contracts.

(1) Cl. 35 The Government of India Act, 1919.

CONCLUSION

In this history I have attempted to trace briefly the growth of the Indian Constitution up to the present time. It is true we have not yet a Constitutional Government in the true sense of the term,¹ still, as I have said in the Introduction, we are on the high road towards getting one, the Government of India Act of 1919 providing the first stage of the forward Journey. The Act and its provisions are essentially of a transitional nature but they contain in their provisions a significant clause² requiring the appointment of a "Statutory Commission for the purpose of inquiring into the working of the system of Government" and to report to what the extent "the principle of responsible" government may be further extended, after the Act has had a trial for a period of 10 years. The ten years will expire in 1929 and the Parliamentary Commission is likely to be appointed in 1928 or early in 1929 and it is expected that the Indian Constitution will reach yet another stage towards responsible and representative government by the next Reforms Act of 1929.

1. See the Introduction of this book.

2. Clause 41 sub-sections (1) (2) (3) The Government of India Act 1919.